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HEARINGS

BEFORE THE

SUBCOMMITTEE ON FISHERIES AND WILDLIFE  
CONSERVATION AND THE ENVIRONMENT

OF THE

COMMITTEE ON  
MERCHANT MARINE AND FISHERIES  
HOUSE OF REPRESENTATIVES

NINETY-THIRD CONGRESS

FIRST SESSION

ON

**Tuna Oversight**

MAY 16, 1973

---

**Commercial Fisheries**

H. Con. Res. 157, H. Con. Res. 170, H. Con. Res. 173, H. Con.  
Res. 229, H. Con. Res. 230, H. Con. Res. 238, S. Con. Res. 11

and

**H.R. 2283**

STRAIGHT BASELINES FOR PURPOSES OF DETERMINING  
FISHERY ZONE BOUNDARIES

JUNE 11, 1973

---

**Brazil Shrimp Agreement**

**H.R. 8529**

TO IMPLEMENT THE SHRIMP FISHING AGREEMENT WITH  
BRAZIL

JULY 20, 1973

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## FISH AND WILDLIFE MISCELLANEOUS

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### Tuna Oversight

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WEDNESDAY, MAY 16, 1973

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON MERCHANT MARINE AND FISHERIES,  
SUBCOMMITTEE ON FISHERIES AND WILDLIFE  
CONSERVATION AND THE ENVIRONMENT,  
*Washington, D. C.*

The subcommittee met, pursuant to call, at 2:05 p.m., in room 1334, Longworth Office Building, the Honorable John D. Dingell, chairman of the Subcommittee (presiding).

Mr. DINGELL. The subcommittee will come to order.

The subcommittee is opening the first of what may have to become a series of hearings on the question of commercial fishing vessels operating outside the bounds of existing conservation treaties. The case in point today involves a U.S. company which purchased a boat built in the United States, which operates with a U.S. crew, but flies under a Dutch flag and which has allegedly been fishing for tuna in a manner which is specifically and strictly forbidden by the Inter-American Tropical Tuna Convention to which this country is a party, and by which we are therefore bound.

This committee is very much concerned with the problem posed by U.S. vessels operating under flags of convenience, and evading regulations established to insure the continued productivity of world fishing stocks. If these regulations are violated with impunity, we all suffer; and yet, as Professor Hardin points out in his paper "The Tragedy of the Commons", the problem is that the rulebreaker suffers less than those who observe the conservation regulations.

This precisely points up the problem confronting us today: the U.S. fishing fleet, and indeed the world fishing fleet, must operate under the same rules, and those rules must be devised to protect the integrity of the stocks. Those who break the rules threaten us all, and must be stopped; by severe penalties if necessary, but they must be stopped.

If existing treaties and laws are inadequate, they must be strengthened. If American institutions, and this includes members of the financial community, are participating in such activities, that participation must cease.

I would not wish to leave anyone in this room with the impression that we are confronted by a situation which is academic, or which can sustain leisurely analysis and treatment. If loopholes are opened

in the web of international regulations, those members of the U.S. fleet will very rapidly find themselves at a crippling competitive disadvantage, faced with Hobson's choice: go foreign, or go bankrupt. We cannot and will not allow this to happen.

The precise details of the transaction in question are not clear to any of us. We have been informed that the corporation in question, a subsidiary of Westgate-California Corp., secured financial assistance from the Export-Import Bank of the United States. We are told that one or more of the boats has violated the Inter-American Tropical Tuna Convention. We are not aware of measures taken by the owner to comply with the requirements of the Marine Mammal Protection Act, passed by the Congress last year, and having as one of its objectives the maximum feasible protection of porpoises, many of whom have been injured or killed in the course of tuna seining operations.

The picture is not pretty, and if the facts prove to be as alleged, might even be described as sordid. It is my intention to see that the entire story is told and available for public review. If it discloses gaps in the existing regulatory structure, it is also our intention to do everything that can and must be done to see that those gaps are totally and irretrievably closed.

Let me say just a few words about the role of the Export-Import Bank of the United States in this situation. Representatives of mine and of this committee have checked on the possibility, first mentioned by the Department of Commerce, that the Eximbank might have made a loan or guaranteed a loan to the foreign subsidiary or subsidiaries controlling the vessels in question.

At various times, they were told that there were no contractual arrangements in effect, that there were, and that the situation was not clear: yes, no, and maybe. The last word that we had on this issue was that a commitment had been made.

This raises some very acute issues, and I hope that our gracious chairman, who is very much interested in this question and who has been interested in the Export-Import Bank as a result of her position on the Banking and Currency Committee, will enter into one discussion these issues. The most basic question of all, it seems to me, is what role ought the Bank to be playing in a transaction in which even the most superficial examination might have disclosed a very real risk of significant treaty violations by a potential borrower? And, even more to the point, what steps ought the Bank to take to insure that this does not happen again?

The present occupant of the Chair recognizes the distinguished Chairman of the Full Committee for such comments and suggestions that she might care to make at this time.

Mrs. SULLIVAN. Thank you, Mr. Dingell.

I am not going to make a comment right now on this except to say that we are very interested in finding out the whole story and the picture of why it is necessary for tuna boats to be registered under foreign flags when they are going out making catches for the packing and fishing industries in this country.



As a member of the Banking and Currency Committee, I am very much interested in the loans made by the Export-Import Bank and I do not know that we are going to get all the answers today to the tuna vessel loans.

I have asked the chairman of the subcommittee to bring the tuna boat group to the witness table in order to hear their story in a brief, capsule form first. Afterwards, we would like to hear from the Government agencies, who are involved in these transactions followed by representatives of the Export-Import Bank. In this way we can have a picture of the entire transaction presented to this committee; before we go on to all of the other details, because I think this matter needs much study.

With that, I turn the committee back to the chairman of the subcommittee to call up the witnesses and start the hearing.

Mr. DINGELL. Thank you Madam Chairman.

Our first witness is our good friend and colleague, the able gentleman from California, Hon. Glenn Anderson.

#### **STATEMENT OF HON. GLENN M. ANDERSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. ANDERSON. Thank you very much, Mr. Chairman.

Recently it has been brought to this committee's attention that an American built vessel, operating with an American crew, has avoided the Inter-American Tropical Tuna Convention regulations by registering its vessel with a non-member nation, and then proceeding to fish for yellowfin during closed season and landing its catch at a foreign port, and transshipping to a port in the United States.

The Tuna Convention Act of 1950 amendments of 1962 primary purpose is, first, to maintain an effective conservation program that is fair and equitable to all who use the tropical tuna resources of the eastern Pacific, which is aimed at producing the maximum sustained yield from such resources, and secondly, for this Nation to have a healthy, strong tuna industry.

The conservation program on the yellowfin tuna resource of the eastern Pacific as established by the Inter-American Tropical Tuna Commission in 1966, is in critical danger. And it is up to this committee to give a full and complete investigation into this critical problem in the tuna industry.

Recent evidence makes more apparent the urgent need for action against runaway flag fishing vessels. We should apply conservation laws equally to the United States and foreign operators.

Also, we should deny runaway flag vessels tax loopholes and advantages that foreign vessels owned by U.S. operators receive presently—and we should prevent the importation into the United States of fish products from runaway flag vessels which are in violation of the international convention.

With the likelihood of runaway flag tuna fishing vessels and their fishing of tuna in violation of the IATTC and other international conventions, it is vital that the U.S. Congress take action to prevent this situation from becoming more critical for the U.S.-flag west coast tuna fleet.

I am very dismayed to think that ships built in this country, with the aid of U.S. tax dollars, could go to a foreign country and put a foreign flag on the ship, in order to qualify for loans from the Import-Export Bank, thus receiving interest at a lower rate than they would be able to obtain at a bank in the United States.

Mr. DINGELL. The Chair would like to thank you for an excellent statement.

Are there any questions? [No response.]

Mr. ANDERSON. Thank you for allowing me to present my statement this morning.

Mr. DINGELL. The Chair will, at this time, call to the witness table to sit as a panel the following individuals: Mr. August Felando, general manager, American Tunaboat Association; Mr. Joe Medina, Jr., together with his wife, Carolyn Medina who are owners of the motor vessel, *Captain Joe Medina*; Mr. Harold F. Cary, vice president, Ocean Fisheries, Inc.; Mr. John J. Royal, executive secretary-treasurer of the Fishermen and Allied Workers Union, Local No. 33 and Mr. Ralph Spinello, the Seine and Line Fishermens Union.

Ladies and gentlemen, if you will, please identify yourself in the order of your appearance. The Chair notes that Mr. Steele is with you.

Mr. Steele, we are certainly pleased to see you at the table.

Please identify yourselves fully.

**STATEMENT BY AUGUST FELANDO, GENERAL MANAGER, AMERICAN TUNABOAT ASSOCIATION; ACCOMPANIED BY JOE M. MEDINA, JR., CAROLYN MEDINA, OWNERS OF THE MOTOR VESSEL "CAPTAIN JOE MEDINA"; HAROLD F. CARY, VICE PRESIDENT, OCEAN FISHERIES, INC.; JOHN J. ROYAL, EXECUTIVE SECRETARY TREASURER, FISHERMEN & ALLIED WORKERS UNION, LOCAL NO. 33; RALPH SPINELLO, SEINE & LINE FISHERMEN'S UNION, AND GEORGE STEELE**

Mr. FELANDO. I would like to recognize the request of Mrs. Sullivan and try to be as brief as possible.

We do have a lot of data we do not expect to go into in detail and I hope to respond fully to your request.

Mr. DINGELL. The Chair does observe it will be necessary for us to keep the record open for a brief period of time and we will be interested in receiving additional submissions.

Mr. FELANDO. I am August Felando. I am appearing before this subcommittee on behalf of the American Tunaboat Association. I am the general manager of this non-profit fishery cooperative association, incorporated under the laws of the State of California, with its principal office of business in San Diego, Calif.

The American Tunaboat Association, (A.T.A.), has been in existence since 1923. The membership is comprised exclusively of tuna-fishing vessel owners. Annually our members catch and unload over 60 percent of all tropical tunas landed in the United States by vessels

operating from the United States. Some of our members operate from Puerto Rico.

There are 142 United States tuna clippers, that is, vessels that have a carrying capacity of 100 short tons of frozen tuna, or more. The total trip carrying capacity of this fleet is about 93,000 tons. There are 12 additional vessels under various stages of construction in the United States.

Our petition to this subcommittee involves an understanding of the legislative history of two Federal statutes—(1). The Tuna Convention Act of 1950, as amended (16 USC 951-961) and (2) the Pelly amendment to the Fishermen's Protective Act of 1967 (Dec. 23, 1971, 22 USC 1971). On April 24, 1973, I provided staff counsel of this subcommittee with copies of a memorandum entitled "Tuna Conventions Act of 1950, as Amended and Other Related Matters." Mr. Chairman, I would like to have such background memorandum made a part of my statement to this subcommittee.

Mr. DINGELL. Without objection the document referred to will be inserted in the record.

[The material referred to is as follows:]

AMERICAN TUNABOAT ASSOCIATION,  
San Diego, Calif.

#### MEMORANDUM

To: House Committee on Merchant Marine and Fisheries.

Subject: Tuna Conventions Act of 1950, as amended and other related matters.

Date: April 24, 1973.

#### I. INTER-AMERICAN TROPICAL TUNA COMMISSION (IATTC)

##### A. Established in 1949 by Convention .

The IATTC was established by an open-ended convention between the Costa Rica and the USA in 1949. Any nation may join whose nationals participate in the fisheries covered by the convention, provided acceptance is given by all members.

The IATTC has the paramount duty to make conservation recommendations, on the basis of scientific investigations, for action by the member Nations to keep the stocks of fishes at levels of abundance permitting the maximum catch on a sustained basis. A Director of Investigations is responsible for the appointment and immediate direction of an internationally recruited scientific and technical staff. The species of fish covered by the convention are yellowfin tuna, skipjack tuna, baitfishes used to capture tuna, and other tuna and tuna-like fishes captured by tuna vessels in the eastern Pacific Ocean.

##### B. Member Nations

Canada, Costa Rica, Japan, Mexico, Panama, and the United States. Ecuador joined in 1961 and then withdrew 21 August 1968.

##### C. Yellowfin Tuna Management Program

The fishery for yellowfin tuna has been under management since 1966. The management program is based on a general catch quota, to be taken on a first-come-first-served basis. The quota is established each year on the basis of the abundance of the stocks, and applies only to a portion of the IATTC's convention area, called the Commission Yellowfin Regulatory Area (CYRA). *A Chart of this area is attached.* The CYRA encompasses an ocean expanse that is about twice the size of Continental United States or 5,012,643 square miles.

Since 1966, the open season for yellowfin fishing has been reduced from



about 10 months to less than 3 months. This characteristic of a shorter open season and a longer closed season is revealed historically as follows:

| <i>Regulation year;</i> | <i>Closure date</i> | <i>Regulation year:</i> | <i>Closure date</i> |
|-------------------------|---------------------|-------------------------|---------------------|
| 1966-----               | September 15.       | 1970-----               | March 22.           |
| 1967-----               | June 24.            | 1971-----               | April 8.            |
| 1968-----               | June 18.            | 1972-----               | March 5.            |
| 1969-----               | April 15.           | 1973-----               | March 8.            |

A portion of the overall quota has been set aside for special allocations to meet the needs of countries with fleets having special economic problems. Developing Nations claim that under the present management system their tuna fisheries cannot develop, and there are strong pressures for increased special allocations. Each member Nation with vessels fishing in the CYRA is responsible for establishing and enforcing its own tuna regulations based on the recommendations of the IATTC. *Copies of Tuna Conventions Act of 1950, as amended and the Yellowfin Tuna Regulations promulgated by the Department of Commerce under authority of such Act is attached.*

#### *D. Background Reasons for IATTC.*

Immediately after World War II, a rapid expansion of the fishery in all aspects caused concern over the rate of both tuna and bait fish exploitation. At that time nearly all of the tropical tuna captured within the eastern Pacific were taken by baitboats. This form of fishery involves chumming the tuna near the vessel with live bait. When the tuna are feeding on the chummed bait fish, they are caught with poles to which are attached artificial lures. The bait boats captured their bait in numerous bays all along the coast of Latin America, some of the most productive being in the coastal waters of Central America. Some of the Central American States realized sizeable sources of revenue from the sale of baitfishing licenses, and hence were concerned over the supplies of bait fish. This was especially true in light of the fact that the anchoveta, a major bait fish species, virtually disappeared from the Gulf of Nicoya, Costa Rica, at about that time. As a result of this concern over both tuna and the bait fish, the governments of Costa Rica and United States entered into the 1949 Treaty establishing the IATTC.

Also at about this time, the South American countries had reacted to the Truman Proclamation of 1945 by also making unilateral declarations of sovereignty or jurisdiction over vast ocean areas and the resources therein. It started with Mexico and then Argentina in 1946. Chile, Panama and Peru followed with claims of control in 1947. In 1948, Costa Rica claimed control over maritime fisheries in three zones: within 12 miles, between 12 and 200 miles from the coast and beyond 200 miles. Such action over fishing was justified on the ground that "defective utilization thereof constitutes a danger to the biological conservation of the species". The decree called for regulation of fishing in order to achieve "a rational utilization, a higher economic output and the conservation and protection of the species". In response to this challenge, the IATTC was created. It represented a method by which Costa Rica and perhaps the other Latin American countries could be persuaded to exchange a system of unilateral and exclusive control over an ocean area and a particular fishery resource therein for a system of bilateral control or multilateral control. This was the principal reason for the early creation of a conservation commission for tuna even though the pressing need for scientific investigation and recommendations at the time was for bait fish, particularly the anchoveta found in the bays of Costa Rica. *A copy of the Convention is attached.*

#### *E. Historical Review of the Yellowfin Tuna Management Program 1966-April 1973.*

The Table below provides some statistical measurements of the conservation program initiated by the IATTC since 1966.

## IATTC EASTERN PACIFIC YELLOWFIN TUNA REGULATORY PROGRAM, 1966-APRIL 1973

| Regulation year | Closure date | IATTC quota (short tons) | Actual annual catch (short tons) | international Fleet capacity (short tons) |
|-----------------|--------------|--------------------------|----------------------------------|-------------------------------------------|
| 1966            | Sept. 15     | 79,300                   | 90,800                           | 46,700                                    |
| 1967            | June 24      | 84,500                   | 90,350                           | 45,445                                    |
| 1968            | June 18      | 106,000                  | 113,000                          | 57,126                                    |
| 1969            | Apr. 15      | 120,000                  | 126,500                          | 62,347                                    |
| 1970            | Mar. 22      | 120,000                  | 142,700                          | 72,936                                    |
| 1971            | Apr. 8       | 140,000                  | 114,200                          | 95,477                                    |
| 1972            | Mar. 5       | 140,000                  | 149,015                          | 99,887                                    |
| 1973            | Mar. 8       | 160,000                  | 108,035                          | 133,202                                   |

<sup>1</sup> Estimated catch as of Apr. 23, 1973—IATTC.

<sup>2</sup> Estimated as of January-February 1973—IATTC.

## II. CIRCUMVENTION OF IATTC TUNA MANAGEMENT: A REALITY

## A. The Pattern of Circumvention Identified

It is well recognized within the eastern Pacific tuna fishery that only U.S. flag vessels and citizens aboard such vessels are effectively regulated by the USA Government. Other member Nations and non-member Nations do not have an enforcement system or a regulatory system equal to that of the United States. The present system of IATTC special allocations effectively eliminates the need for Mexico, Costa Rica and Japan to be required to apply a USA type system to enforce their own regulations against their flag vessels. The present enforcement actions taken by Canada and Panama makes it possible for their flag vessels to evade regulation. As a result of the denouncement action taken by Ecuador in 1968 and by making reference to the applicability of the IATTC special allocations, no flag vessels of Ecuador have to be concerned about the IATTC; therefore, it is possible for such vessels to avoid regulation. By ignoring the need to join the IATTC and by making reference to the special allocations, the flag vessels of Bermuda, Peru, Chile, Cuba and Spain can also avoid regulations.

Thus, the pattern for circumventing the IATTC management program has already been established. The most obvious action would be to build or acquire a fleet of tuna vessels that have a carrying capacity of less than 400 tons and place it under the flag of a country that has no such vessels and use the annual 6000 tons of Yellowfin tuna allocated for such vessels during the closed season. This is what a citizen of Canada has done with two former Canadian flag vessels, the PAWN PAWN and the KPESHIE. He changed the flag of these two vessels, each having a capacity of about 301 tons to a Bermuda Registry. He was asked by Canada to change flag registry. Such an arrangement permits him to operate such vessels free of regulation all year.

However, it is well recognized in the USA by tuna vessel owners and operators that a vessel of less than 400 tons carrying capacity cannot compete with vessels of greater size, seaworthiness and speed. Therefore, it is necessary to find a flag registry that would permit a Super Seiner (Tuna vessel having greater than 400 tons carrying capacity, usually 1000 tons or more) to operate and avoid regulation. First, the flag State must not be a member of the IATTC. Second, the flag State must be one that will have little capability or concern over the operations of the vessel. The flag State that is selected must, in all respects, be one of convenience, particularly on the issue of conservation enforcement and participation in organizations like the IATTC or the Atlantic Tuna Commission, such as the International Conservation for the Atlantic Tunas (ICCAT).

## B. Benefits and Detriments of the Circumvention

The benefits of this foreign flag operation are obvious. When the U.S. Tuna Fleet is forced to leave the CYRA during the closed season, particularly during the months of April, May, June, October, November and December, the foreign flag vessel will have the area practically to itself.

The detriments of such an operation are very limited. The cost of transshipment to U.S. ports presents no problem, and it would even be possible for such vessel to land directly in American Samoa and other possessions whenever it was appropriate. This is because the *Nicholson Act* (46 USC 251-252) only applies to "a port of the United States". The problem of the 200 mile confrontation only occurs off Ecuador and Peru, and while the loss of protection under the *Fishermen's Protective Act of 1967, as amended* (22 USC 1971-1978), is a serious and damaging detriment, the cost of purchasing licenses on a very limited basis can be handled. Most of the Yellowfin Tuna fishing is located well above Ecuador and primarily in areas off Mexico and Central America. And, since there is no need to balance Yellowfin fishing with either a Skipjack Tuna incidental catch or a full load of Skipjack Tuna, as is the case with a U.S. flag vessel, the foreign flag vessel can fish almost exclusively all year in the Yellowfin areas beyond Ecuador and Peru. By avoiding the IATTC Conservation program, you can also avoid the 200 mile problem. Thus, the options of purchasing licenses or of fishing the dominant Yellowfin area exclusively year around would successfully offset the loss of seizure protection available to U.S. flag vessels under the Fishermen's Protective Act of 1967, as amended. These facts plus the increasing value of frozen tuna in the world tuna markets make the choice less difficult.

*Retaliation Under U.S. Statutes to Foreign Fishing Operations in the CYRA.*—The provisions of the Tuna Conventions Act of 1950, as amended, and those contained in the Pelly Amendment to Fishermen's Protective Act of 1967, as amended (P.L. 92-219, 23 December 1971), must also be taken into account.

a. *Tuna Conventions Act of 1950, as amended. Section 955(c), Title 16, U.S.C.*—Most people who have examined the importation prohibitions in Section 955 (b) do not believe that they are effective or practical because of the problems of fish product identification. More importantly, most people in the Tuna Industry are of the belief that the existing regulations published in the Federal Register, Vol. 31, 176-10 September 1966, pages 11938-11944 are not very meaningful. Notably, Part 280-Yellowfin Tuna, Subchapter 4-Eastern Pacific Tuna Fisheries, Chapter II, has not been changed in the past 6½ years. The regulations require the Director of the NMFS, subject to approval by the Secretary of Commerce, along with the concurrence of the Secretary of State to publish a finding to commence the mechanism for an import prohibition. To avoid the prohibition, the skippers from the foreign country affected need only supply a certificate of eligibility in the form provided by the regulations. *See attached Regulations, Part 281.*

Doubt about the implementation of the import prohibitions is further enforced within the Tuna Industry on the basis of the difficulties encountered by the Industry in its battle for survival with Japanese imports during the years, 1951-1959. In addition, the experience of the Tuna Industry with the ability of the Department of State to avoid statutory language in a number of laws dealing with the illegal seizures on the high seas has also contributed to a strong feeling that forceful action in the area of tuna imports from Latin American countries and developing countries will be circumvented.

b. *Fishermen's Protective Act of 1967, as amended (Pelly Amendment).* The proposal in this Amendment dealing with imports is subject to the authority of the President. This same approach is now present as to the withholding of Foreign Assistance Funds in Section 5 of the Fishermen's Protective Act of 1967, as amended, and is similar to the language used in the Foreign Assistance Act of 1961, as amended. Again, the Industry has doubts on whether such approach would be timely and effectively implemented.



### III. MEASUREMENT OF THE THREAT TO THE YELLOWFIN TUNA MANAGEMENT PROGRAM IN THE EASTERN PACIFIC BY FOREIGN FLAG OPERATIONS

#### A. Total Number and Capacity of Foreign Flag Fleet of Super Seiners (Vessels of Greater than 400 Tons Carrying Capacity (Short Tons))

| Country             | Number | Capacity (short tons) | Country                | Number | Capacity (short tons) |
|---------------------|--------|-----------------------|------------------------|--------|-----------------------|
| 1. Bermuda.....     |        |                       | 12. Korea (South)..... |        |                       |
| 2. Canada.....      | 5      | 5,100                 | 13. Mexico.....        | 5      | 3,400                 |
| 3. Chile.....       |        |                       | 14. Netherlands.....   | 1      | 1,600                 |
| 4. Colombia.....    |        |                       | 15. Nicaragua.....     |        |                       |
| 5. Costa Rica.....  |        |                       | 16. Panama.....        | 4      | 2,225                 |
| 6. Ecuador.....     |        |                       | 17. Peru.....          |        |                       |
| 7. El Salvador..... |        |                       | 18. Spain.....         | 5      | 5,425                 |
| 8. France.....      | 3      | 4,300                 | 19. Taiwan.....        |        |                       |
| 9. Guatemala.....   |        |                       |                        |        |                       |
| 10. Honduras.....   |        |                       | Total.....             | 24     | 22,800                |
| 11. Japan.....      | 1      | 750                   |                        |        |                       |

Four of *Mexico's* vessels are operating under a special hardship allocation of 6000 tons. The Fish Captains of all these vessels are U.S. citizens. The vessels from *France* have left the Pacific for the Atlantic and are not expected to return this year. The *Japanese* vessel has followed the regulations of the IATTC and is expected to leave the Pacific for the Atlantic after this voyage. The vessels from *Canada* are expected to fish in the Pacific particularly in the latter part of the year. Evidence of severe violations occurring in November, December, 1972 was provided by the American Tuna-boat Association to the Department of Commerce. All but one of the Canadian vessels are skippered by U.S. citizens. At present, four of those vessels are in operation; one vessel is undergoing modification in a shipyard in the State of Washington and is not expected to commence its first voyage until mid-1973. The vessels from *Panama* are not owned by citizens of *Panama*. Three vessels are jointly owned by citizens of the *United States* and the government of *Yugoslavia*. The fourth vessel is owned by citizens of *South Korea*, and the vessel is an ex-USA flag tuna vessel sold foreign first to *Australia* and then to *Panama*.

The most immediate threat, assuming that *Canada* and *Panama* take effective enforcement action as members of the IATTC, comes from the flag vessels of *Spain* and *Netherlands*.

New construction activity has been reported extensively in the past year. One additional Super Seiner is expected to enter the fishery within weeks; the flag State is *Netherlands*. This vessel is of about 1100 tons capacity, and has been built in the State of Washington. Two other vessels, having a total capacity of about 2800 tons are also under construction in California and Washington, and they have been reported as being readied for foreign registry. *Peru* is reported to have three (3) 1000 ton vessels under construction in *England*. *Nicaragua*, an applicant for membership to the IATTC has publicized a report that it is constructing a Super Seiner in *Spain*. Investment activity in new Super Tuna Seinners has been reported from *Ecuador*, *France*, *Mexico* and *Korea*. (New construction activity is difficult to measure and caution is advised on making predictions until actual construction is commenced.)

The threat from foreign flag super seiners operating within the Commission's Yellowfin Regulatory Area (CYRA) is compounded by the fact that *Mexico* has a special allocation for four (4) super seiners in the amount of 6000 tons.

#### M/V "ATLANTIS"—A CASE ON POINT

The *Atlantis* was built for the Dutch flag in 1972, and commenced its first fishing voyage in January, 1973. Its second trip was commenced on April 5, 1973 from Puntarenas, Costa Rica. This 1600 ton Super Seiner was built in the State of Washington for Gann Enterprises, who in turn sold the vessel along with three vessels under construction, nine other active seiners and one freezer ship to Westgate-California Corporation or one of its subsidi-

aries in February, 1973. The operating company for this fleet is known as Western Ocean Products Company, San Diego, California.

Attached you find an article about the *Atlantis* printed in the March, 1973 issue of National Fishermen, along with some editorial comment.

**B. IMPACT OF FAILURE TO PREVENT MEANINGFUL AND ILLEGAL FOREIGN FISHING OPERATIONS WITHIN THE IATTC YELLOW-FIN TUNA REGULATORY AREA**

1. *Substantial Damage or Destruction to IATTC and ICCAT.*—If no effective enforcement program is provided, then there exists very little reason for the continued existence of the IATTC. With the IATTC destroyed, the existence of the Atlantic Tuna Commission (ICCAT), would also be placed in serious jeopardy.

2. *Substantial Damage to the Law of the Sea Position of the United States on Fisheries.*—The United States takes the position that only international fishery organizations can effectively manage highly migratory species such as tuna. The success of the IATTC to date has been used to advance this position. Attached hereto is a recent position paper introduced by the United States in the United Nations Committee preparing for the 1974 Law of the Sea Conference, Statement by H. W. Pollock and Working Paper on Salmon and Tuna.

3. *Substantial Damage to the Geneva Law of the Sea Treaty Obligations of the United States.*—At present, the United States is in a position to say that its citizens are exercising the freedom to fish for tuna on the high seas of the eastern Pacific "with reasonable regard to the interests of other States". (Article 2, Geneva Convention on the High Seas.) This is because it is supporting the activities of the IATTC. The United States would have no effective alternative to the IATTC should such conservation organization fail. The original rationale for the IATTC would also fall, thereby opening the door for an effective re-assertion of the doctrine of unilateral declaration of ocean claims such as was made by Costa Rica in 1948.

4. *Substantial Adverse Reaction by U.S. Flag Tuna Fishing Vessel Owners to Transfer Flag or Build Foreign Flag Vessels.*—The legislative history of the 1962 Amendment to the Tuna Conventions Act of 1950 reveals the concern of the tuna vessel owners about the inequity of having U.S. flag owners regulated while foreign flag operations fish free of regulation. The U.S. tuna fishing vessel segment of the fleet is characterized by its ability to survive. If survival means change of flag, then change of flag will be their move. If the *Atlantis* points the way to avoid U.S. regulation, then a substantial move of U.S. talent and capital will follow. It will be only a question of selecting the "right flag." Those who were involved in the decision to have a Dutch flag on the *Atlantis* testified in 1962. They have expressed views, along with others in the fleet, that the language of the 1962 statute would be circumvented by the U.S. government, and that in time only U.S. flag vessels would be regulated while other flag vessels would fish free of regulation. In addition, other events in recent years have made a number of vessel owners and skippers ready to make the move if the *Atlantis*, the *Vida Angela*, *Jasna*, *Sol De Ipanema*, *Costa De Marfil*, and others show the way. The vessel operators hear of arrangements being made by U.S. and foreign canners to purchase fish from foreign built and operated tuna vessels who fish in the regulatory area by either evading or avoiding regulations. They also hear that these foreign built and operated vessels are financed by U.S. canners. In absence of strong U.S. government counter-moves, it is our opinion that the U.S. vessel owners will see little reason to buck the trend; to them, their only apparent choice would be to become part of the trend rather than fight for survival under an inequitable arrangement forced upon them by U.S. vessel documentation.

In 1966, the size of the U.S. tuna fleet in terms of carrying capacity represented 88.0% of the total carrying capacity tonnage of the entire International Tuna Fleet operating in the IATTC Convention waters. In 1972, the percentage declined to 76.7%.

In 1966, the total tropical tuna catch of the U.S. tuna fleet within the IATTC Regulatory Area represented 84.4% of the total tropical tuna (Yellowfin and Skipjack tunas) catch of the entire International Tuna Fleet in such area. In 1972, the percentage declined 76.4%.

In our opinion, should the U.S. Government fail to take steps to prevent the circumvention of the IATTC Yellowfin Tuna Management program, the above recorded trends will accelerate. After it is determined that the U.S. Government cannot take effective and timely action to impose sanctions on foreign flag violations and those who trade with them, then we would expect the size and catch of the U.S. flag fleet to fall dramatically within one or two years thereafter. An annual decline of 15% to 20% would not come as a surprise to the Industry.

#### LIST OF ATTACHMENTS

1. Charts of IATTC Eastern Pacific Yellowfin Tuna Regulatory Area.
2. Convention for the Establishment of an Inter-American Tropical Tuna Commission.
3. Tuna Conventions Act of 1950, as Amended.
4. Federal Regulations, Parts 280 and 281 Title 50, Chapter II, Subchapter 4.
5. National Fishermen—March 1973 Issue—Article on the M/V *Atlantis*.
6. Statement by USA Representative Howard W. Pollock.
7. USA Working Paper, 2 April 1973, Submitted to U.N. Sea-Bed Committee Re: Tuna.

Mr. FELANDO. The legislative history of the 1962—87th Congress, 2d Session—amendments to the Tuna Conventions Act of 1950 is particularly helpful at this hearing, because it establishes the intent of Congress on the two subjects of primary concern to our membership: (1) The maintenance of an effective conservation program that is applied fairly and equitably to all who use the tropical tuna resources of the eastern Pacific, and that is aimed at producing the maximum sustained yield from such resources, and (2) a healthy, strong American tuna industry.

Mr. Chairman, we believe that the conservation program on the yellowfin tuna resource of the eastern Pacific as established by the Inter-American Tropical Tuna Commission—IATTC—since 1966 is in critical danger. We believe this crisis has been caused in large part by the failure to properly administer the Tuna Conventions Act of 1950, as amended, and to take timely and effective investigation actions as provided by the Pelly amendment to the Fishermen's Protective Act of 1967.

In making an evaluation of such crisis, we assume that this subcommittee has knowledge of the origin of the Inter-American Tropical Tuna Commission—IATTC—and of the successful scientific investigations it has conducted on the tuna populations in the Eastern Pacific since 1950. We refer you to our April memorandum to the committee for information on the history, structure and conservation activities of the Tuna Commission—IATTC.

We also assume that this subcommittee is familiar with the regulatory system adopted by the United States to implement the conservation recommendations of the Tuna Commission—IATTC—since 1966. This system, which involves the enforcement of U.S. flag vessels in an area twice the size of continental United States, has been administered by the Department of Commerce in recent years and prior to the creation of NOAA, by the Department of Interior. Appended to the ATA April memorandum to this committee are the Federal regulations applicable to U.S. vessels fishing for yellowfin tuna in the IATTC regulatory area, along with charts of such area. Along with charts the Federal regulatory system applicable to U.S. vessel



yellowfin tuna production in the Eastern Pacific is extremely complicated, but knowledge thereof is essential in the understanding of the crisis facing the Tuna Commission—IATTC.

Appended to this statement is a copy of a recent review of the various management actions taken by the Tuna Commission since 1966-73. Such a review is helpful in understanding the Federal regulatory system.

Mr. DINGELL. Without objections that will be inserted in the record at the appropriate place.

[The material follows:]

REVIEW OF THE YELLOWFIN TUNA CONSERVATION PROGRAMS RECOMMENDED BY THE IATTC, 1966-1973—BACKGROUND INFORMATION ON THE PROPOSALS

TUNA RESOURCES: MANAGEMENT AND CONSERVATION IN EASTERN PACIFIC

Research on the yellowfin and skipjack fishery in the Eastern Pacific was initiated in 1950 through an international convention between the governments of Costa Rica and the United States. At that time a body known as the Inter-American Tropical Tuna Commission (IATTC) was established. Other governments fishing for tunas in the eastern Pacific Ocean are eligible for admission to the Commission, and under this provision Canada, Mexico, Panama, and Japan have joined. Ecuador joined in 1961 but denounced the Treaty effective August 1968. Nicaragua and France have indicated interest in making application for membership. The Commission's scientific staff collects and interprets data to facilitate the maintenance of tuna populations at levels that will permit maximum sustained catches. Investigations into their life history, population structure, and ecology with a view as to the effects of environmental factors and fishing effort are the Commission's primary objectives. When scientific findings indicate conservation steps are necessary, the Commission recommends such measures at an inter-governmental meeting where regulations are proposed and adopted.

In the early 1960's it was determined by IATTC that the eastern Pacific yellowfin stocks could support an annual yield of around 95,000 tons. The efficient purse seiners were able to exceed this amount considerably, and in 1966 the member countries of IATTC agreed to regulate the yellowfin fishery under a quota system. That year's quota was set at 79,300 tons in order to rebuild stocks to their optimum levels. In 1967 the quota was 84,500 tons and in 1968 it was 106,000 tons because favorable environmental conditions had caused a temporary increase in the equilibrium yield—that is, the amount that can be removed without altering the stock size. In 1969 and 1970, however, the quota was raised to 120,000 tons and in 1971 and 1972 to 140,000 tons. The quota was set above the estimated equilibrium yield as a check on the estimated level and to provide research data concerning the effects of overfishing the yellowfin resource.

That part of the eastern tropical Pacific Ocean subject to yellowfin quotas and regulations occupies a surface area of over 5 million square miles, an area almost twice the size of continental United States. A map of the Yellowfin Tuna Regulatory Area is attached.

During the seven years that the fishery has been under regulation, the yellowfin closure date has come earlier and earlier each year. This characteristic of a shorter open season and a longer closed season became clearly identifiable in 1967 and 1968. In 1966, the closure date was September 15; in 1967, it was June 24, and in 1968, the closure date was June 18. Mexico and the USA commenced to experience difficulties in the enforcement of the regulations concerning incidental catch limitations in 1967 and 1968.

A common problem confronted by the surface fleets of Mexico and the USA became recognized. The baitboats of both fleets were being affected by the development of a closed season that approximated the season when the yellowfin tuna, the regulated species, are more available to the baitboat gear. Thus, the argument in the USA was that the regulatory system favored the purse seine gear and discriminated against the baitboat gear. Mexico further argued that such a system would prevent the development of their fishing

fleet because "the fish would be caught before its fleet could sail". Both of these arguments became expressed in the proposal that the regulatory system was unfair and discriminatory towards small vessels. Costa Rica, with only one small baitboat in its fleet, also expressed dissatisfaction with the system. Experience under the system revealed that as the length of the open season decreased, the opportunity of the one cannery in Costa Rica to receive fish from USA vessels throughout the calendar year also was affected. Costa Rica started to express the view that the system was unfair because it caused the catch of yellowfin tuna to be generated early in the fishing year and not throughout the entire year, and that such a condition would not allow a cannery operation that was dependent upon foreign supplied fish to operate profitably throughout the year. Japan expressed no concerns about the system during these years because the incidental catch limitation regulation allowed its longline gear to operate with little or no restriction. Ecuador, with a fleet composed of vessels operating on a daily basis, was not confronted with any difficulties by virtue of the special treatment of such vessels under the incidental catch allowance established by the Commission.

As these problems were identified, the member countries responded by establishing special study committees pursuant to directions by the Inter-Governments. Alternative regulatory systems were proposed and studied by these committees. Mexico was particularly insistent in expressing the view the regulatory system be replaced by a country quota arrangement, while the USA responded in approaches that considered various modifications of the existing system. With each annual meeting, a new effort to evaluate the regulatory system was initiated. It is fair to say that the USA carried the leadership in establishing and conducting these studies. Concern about the fairness of the system was particularly acute in the baitboat segment of the USA fleet. Necessarily, the position of Mexico and Costa Rica in helping the "small boats" was strongly supported by elements of the USA industry.

Besides these attacks on the regulatory system, arguments were being advanced that the fishing effort and catch statistics for 1967 and 1968 suggested that the scientific staff of the Commission had been too conservative in estimating the Maximum Sustainable Yield (M/S/Y). During the annual meeting of 1968, the Director of Investigations of the Commission was directed to devise an experimental program to achieve greater certainty of the Commission's understanding of the M/S/Y of the Yellowfin fishery. With the adoption of a three (3) year experimental program during the 1969 annual meeting of the Commission, a proposal by Mexico to establish a special allocation for small vessels was also adopted for one (1) year only. The objective of such special allocation at such time was as follows:

(a) The USA concluded that such special allocation was necessary because the "small vessels" of all countries, regardless of gear, needed assistance to adjust to the lengthening closed season that would necessarily follow from the conduct of the experimental program. That the best form of assistance was in allowing such vessels adequate yellowfin tonnage to justify effort for the unregulated fish within the regulatory area during the closed season. That no special allocation was necessary for the larger vessels to operate during the closed season, because they were capable in adjusting by fishing outside the regulatory area or by fishing on unregulated fish located in areas where competition from the "small vessels" was seldom, if ever, confronted.

(b) Mexico concluded that such special allocation was necessary, because its fleet, which was small in number and size, required freedom from regulation to develop and to compete with other fishing countries. Mexico further added the argument that its cannery operation needed fish throughout the year for survival and growth.

As a result of the action taken in 1969 to adopt modifications of the regulatory system for one year only of the experimental program, only the USA fleet and part of the Canadian fleet were subject to the burdens of the regulatory system.

In 1970, the special allocation was again increased, and vessels participating in such relief were now recognized to include vessels of under 401 short ton capacity rather than the 1969 vessel size limit of under 301 short ton capacity. Significantly, the increases in the special allocation from 4000 to 6000 tons was granted during an Inter-Governmental meeting that was held



one month after the Closure date of the fishery. Thus, the catch in 1970 exceeded the experimental quota of 120,000 tons for 1970 by 15% or 21,000 tons. The inter-Government resolution termed the grant of the one year only request of Mexico as "emergency" in nature. Costa Rica received special relief in the form of a special provisos that allowed the country exemption of 1000 tons to include landings by all flag vessels in such exempt country, provided that a tuna cannery was located in such country.

For 1970 and 1971, the IATTC continued the annual catch limit (quota) on the total catch of yellowfin Tuna, subject to the right of the Director of Investigation to reduce or increase the limit. The increase was limited to no more than two successive increments of 10,000 tons each. The regulatory program continued the special allowances as follows:

(1) Exemption to countries whose fisheries are not of significance, namely whose annual capture does not exceed 1000 tons. Allowing all members and cooperating countries to permit their vessels to land yellowfin tuna without restriction in such exemption countries that have tuna canning facilities until the 1000 ton limitation is reached.

(2) Permission to vessels to land an incidental catch of yellowfin, the amount of such catch by each vessel to be determined by the flag country; provided, however, that the aggregate of yellowfin tuna taken by all such vessels of a country so permitted shall not exceed 15 per cent (15%) of the combined total catch taken by such vessels during the period that vessels are permitted to land incidental catches of yellowfin tuna.

(3) Permission to flag vessels of each country, of 400 short tons capacity and less, that fish in the Regulatory Area after the Yellowfin Closure date to fish freely until 6000 short tons of Yellowfin Tuna are taken by such vessels.

As a result of a special request by Mexico in 1971 and 1972, the IATTC also adopted a special allocation for "newly constructed flag vessels of those members of the those members of the Commission which are developing countries and whose fisheries are in the early stage of development, (that is, whose tuna catch in the Convention Area in 1970 did not exceed 12,000 short tons, and whose total fish catch in 1969 did not exceed 400,000 metric tons) and which enter the fishery for yellowfin tuna in the Convention Area for the first time either during the closed season in 1971 or during 1972, and, which, because of characteristics such as size, gear or fishing techniques, present special problems to fish unrestricted for yellowfin tuna until such vessels have taken in the aggregate 2000 short tons of yellowfin\* \* \*". Only Mexico was able to take advantage of this special allocation in 1971 and 1972.

1973 SUPPLEMENT: TUNA RESOURCES, MANAGEMENT AND CONSERVATION OF THE YELLOWFIN TUNA IN THE EASTERN PACIFIC. IATTC; MAY 10, 1973—AMERICAN TUNABOAT ASSOCIATION

The IATTC held its 27th meeting in November 1972 in Panama. The annual catch limit (quota) approach as adopted in 1970, 1971 and 1972 was continued for 1973. The quota of 130,000 short tons was established, subject to the right of the Director of Investigations to increase the limit in three (3) successive increments of 10,000 tons each. The exemption of 1000 tons was continued as well as the incidental catch permission plus the special allocation of 6000 short tons for vessels of each country of 400 short tons capacity and less. Again, Mexico was the only country able to take advantage of a special allocation for newly constructed flag vessels. In 1971 and 1972, the amount of such annual special allocation for such vessels was 2000 short tons. For 1973, this was increased to 6000 short tons subject to a reduction by the amount of Yellowfin tuna caught by such vessels in excess of 4000 short tons during the Closed Season. At the present time, Mexico has seven (7) tuna seiners, or a total carrying capacity of about 3900 tons that would be able to operate during the Closed Season until the 6000 short ton special allocation is caught by such vessels. Because of this special allocation, Mexican fishing vessels have the right to catch 12,000 tons of Yellowfin tuna during the Closed Season, all other member countries are limited to the 6000 ton special allocation for small vessels.

Mr. FELANDO. Mr. Chairman, the American Tunaboat Association strongly asserts its full and complete support for an international

tropical tuna management program in the eastern Pacific. The ATA supported the creation of the Inter-American Tropical Tuna Commission (IATTC), and we continue to support its right to function and perform its conservation activities. The ATA also supports the position of the United States as expressed before the U.N. Seabed Committee preparing for the Law of the Sea Conference. Namely, that tuna should not be the subject of coastal State management but rather that "both the conservation of, and the allocation of catch from such resources can only be accomplished by international organizations established for that purpose." (Statement of Howard W. Pollock, U.S. Representative to the U.N. Seabed Committee, April 3, 1972 in New York.)

Yet, while our support for the activities of the IATTC and the Law of the Sea position of the United States respecting the tuna fishery remains strong, recent events concerning foreign flag vessel tuna operations in the eastern Pacific has shaken our confidence in our Government's ability to insure the effectiveness of any international fishery organization authorized to recommend a conservation management program for tuna. We are here today to determine whether and how the executive arm of our Government will respond to such challenge. In 1962 and in 1971, Congress clearly established its policy to support an international fishery program, the purpose of which is to conserve or protect the living resources of the sea.

In 1962, the Senate Commerce Committee (Report No. 1838, 87th Cong., 2d sess.), in reporting on S. 2568, a bill to amend the Tuna Convention Act of 1950, stated as follows, and it is very important that I take the time to read the quote. It reads:

"The committee, however, is sympathetic to the understandable concern of the industry that the bill could result in restrictions on the American Fishing industry while nationals of other countries would be free to exploit the resources without restraint. The bill, as amended by the committee, is carefully tailored to insure that restrictions are applied fairly and equitably to all who use the tropical tuna resources of the eastern Pacific. Restrictions, under the bill, could not be applied to Americans until comparable restrictions were applied by other interested countries to their fishermen. The embargo provisions of the bill, would deny entry into the United States of fish subject to regulation which were caught under circumstances that would defect or diminish the effectiveness of the conservation recommendations of the Commission, provided additional incentives in this respect. They are intended to remove any possibility that the lucrative market in the United States for tuna will encourage fishermen of other countries to operate in a manner that will defeat the purpose of the conservation program. pages 3 and 4 (emphasis added)

It would be possible for us to quote additional remarks of Congress on this point, particularly in reference to the Pelly amendment. We know how Congress feels and intends on the subject, but we question the willingness of the executive department to sacrifice "trade" for "conservation."

The legislative record is very clear on the embargo provisions of the Tuna Conventions Act of 1950, as amended. In 1962, the Department of Interior, at the request of the Senate Committee on Commerce, submitted a statement regarding its plans for carrying out the import-control provisions of the law. Regulations were enacted in 1966, and have not been changed since then by the Department of

Commerce. Since 1966, the ATA has requested investigations by the National Marine Fisheries Service in the manner prescribed by the regulations. First, regarding violations of Mexican tuna fishing vessels in 1967, then again in 1968 also involving violations of Mexican tuna fishing vessels. In December 1970, we raised the violation of Canadian tuna vessels, illustrated by photos of such vessels taken by U.S. Coast Guard airplane. In November 1972, we also provided information to the Government about activities of Canadian and Spanish flag vessel operations. In the past month, we have provided information concerning Spanish and Dutch flag tuna fishing vessels. Although section 281.5(a) of part 281, title 50 of the Code of Federal Regulations prescribes a system of timely investigations by the Director, NMFS, "as may be necessary to keep himself and other persons concerned currently informed regarding the nature and effectiveness of the measures for the implementation of the Commission's recommendations which are being carried out by countries whose vessels engage in fishing within the regulatory area," (I read that from the regulation), we in the ATA are ignorant of any such investigations other than the ones prompted by ourselves in 1967, 1968, 1970, 1972, and April 1973.

We believe that current tuna fishing operations in the regulatory area by vessels of the countries of Spain and Netherlands seriously threaten the achievement of the objectives of the Commissions conservation recommendations. We also believe that a threat also exists by other foreign fleets. Should the subcommittee desire, we are prepared to submit duplicate originals of the affidavits we have submitted to the Department of State and Commerce and the Director of the National Marine Fisheries Service, the subject of which clearly indicate a pattern of fishing operations by foreign flag tuna vessels in a manner which diminishes the effectiveness of the fishery conservation program of the IATTC.

I think it would be appropriate to say that those affidavits will appear here with your permission, Mr. Chairman.

Mr. DINGELL. Without objection, so ordered.

[The material referred to is as follows:]

#### AFFIDAVIT

STATE OF CALIFORNIA, *County of San Diego*, ss:

I, AUGUST FELANDO, being duly sworn, say:

That I am the General Manager of the American Tunaboat Association, a tuna fishery cooperative which has its principal office located at One Tuna Lane, San Diego, California, 92101.

That in my capacity as General Manager, I have the duty to keep myself and the membership of the American Tunaboat Association informed on the number, capacity and design of foreign built and owned tuna vessels operating in the fishing grounds fished by the U.S. Tuna Fleet.

That I am informed and believe that the following information is a reasonably accurate report of the number, flag State and carrying capacity of tuna vessels planned or under construction for countries that operate tuna vessels in the Eastern Pacific:

1. That in *Peru*, shipyards have five (5) tuna purse seiners, each of 600 tons carrying capacity, under construction for *France*;
2. That in *Peru*, shipyards have six (6) tuna purse seiners, each of 600 tons carrying capacity, under construction for *Cuba*;



3. That in *Peru*, shipyards have three (3) tuna purse seiners, each of 200 tons carrying capacity, under construction for *Ecuador*.

4. That in *England*, shipyards have five (5) tuna purse seiners, each of 1000 tons carrying capacity under construction for *Peru*;

5. That in *England*, shipyards have three (3) tuna purse seiners, each of 1000 tons carrying capacity, under construction for *Mexico*;

6. That in *Mexico*, shipyards have four (4) tuna purse seiners, each of 150 tons carrying capacity, under construction for *Ecuador*.

7. That in *Colombia*, an unknown number of tuna purse seiners, each of 450 tons carrying capacity, under construction for *Ecuador*.

8. That in *Spain*, a shipyard has one (1) tuna purse seiner of about 2000 tons carrying capacity under construction for *Nicaragua*;

9. That in *Japan*, shipyards have three (3) tuna purse seiners of about 650 tons each under construction and operation for owners in an unidentified South American country

That I am informed and believe that additional tuna seiners are under construction in France and Spain for citizens of such countries and that such vessels plan to fish in the Eastern Pacific.

AUGUST FELANDO.

Subscribed and sworn to this  
10th day of May, 1973.

Notary Public.

#### AFFIDAVIT

STATE OF CALIFORNIA, *County of San Diego*, ss:

I, AUGUST FELANDO, being duly sworn, say:

That I am the General Manager of the American Tunaboat Association, which tuna fishery cooperative has its principal offices located at One Tuna Lane, San Diego, California, 92101.

That in such position, I am directed to maintain a current and accurate knowledge of the number of tuna purse seiners under construction in the United States so as to keep the membership of the American Tunaboat Association advised of the size of the U.S. Tuna Fleet.

That on Thursday, May 10, 1973, I contacted representatives of those U.S. shipyards who are recognized as builders of tuna purse seiners, and that such representatives reported to me the following:

That there are five (5) vessels under construction at Campbell Industries, San Diego, California, 92112. The total frozen tuna carrying capacity of such vessels is 5,500 short tons, and that within two weeks, such shipyard will deliver another tuna purse seiner named the KING OSCAR (1100 tons) to the owners.

That there are four (4) vessels under construction at San Diego Marine Construction Co., San Diego, California, 92112. The total frozen tuna carrying capacity of such vessels is about 4,400 tons, and that such shipyard is involved in negotiations to construct two (2) additional 1100 ton Class seiners.

That there are four (4) vessels under construction at J. M. Martinac Shipbuilding Corp., Tacoma, Washington, 98421. The total frozen tuna carrying capacity of such vessels is about 5,500 short tons.

That there is one (1) vessel under construction at Tacoma Boatbuilding Co., Inc., Tacoma, Washington, 98422. The frozen tuna carrying capacity of such vessel is about 1100 short tons, and that such shipyard is negotiating with the owner of the vessel under construction to build two (2) additional tuna seiners of the same carrying capacity.

In summary:

| Name of Shipyard | Under construction |          | Awaiting delivery |          | In negotiation |          |
|------------------|--------------------|----------|-------------------|----------|----------------|----------|
|                  | Number             | Capacity | Number            | Capacity | Number         | Capacity |
| 1. Campbell..... | 5                  | 5,500    | 1                 | 1,100    | -----          | -----    |
| 2. SDMC.....     | 4                  | 4,400    | -----             | -----    | 2              | 2,200    |
| 3. Martinac..... | 4                  | 5,500    | -----             | -----    | -----          | -----    |
| 4. Tacoma.....   | 1                  | 1,100    | -----             | -----    | 2              | 2,200    |
| Total.....       | 14                 | 16,500   | 1                 | 1,100    | 4              | 4,400    |



That upon information and belief, the vessel under construction and the two (2) vessels under negotiation at Tacoma Boatbuilding are being built for foreign registry; that two (2) of the four vessels under construction at J.M. Martinac Shipbuilding are being built for foreign registry; that one (1) vessel under construction at San Diego Marine Construction is planned for foreign registry, and one (1) vessel under construction at Campbell Industries is planned for foreign registry. That in summary, seven (7) tuna seiners under construction or in negotiation for construction or a total carrying capacity of about 7,700 tons are planned for foreign registry.

AUGUST FELANDO.

Subscribed and sworn to this  
10th day of May, 1973.

*Notary Public.*

Mr. FELANDO. We want the import-control provisions of the Tuna Conventions Act of 1950, as amended, implemented. We want the President of the United States to prohibit the importation of fish products from these violating countries. We want what Congress has expressed, namely that the marketplace of the United States will not be used to encourage foreign fishermen to operate in a manner to destroy international fishery conservation programs. In this World of limited marine protein resources, this country cannot afford to be hypocritical on the question of resource management. It must make the tough decisions, and it must move quickly. The danger to the IATCC and its conservation program is immediate. The challenge forced upon the United States cannot be ignored or avoided. Nor should Congress allow the circumvention of evasion of its mandate.

The reason for our concern for immediate Government action is based upon our knowledge of the growth and capacity of the foreign fishing fleet that is expected to operate without restriction during the 1973 Closed Season and the impact of such a fleet on the tuna resource.

I will depart from the prepared statement to make this remark: At the present time. Ten foreign flag vessels of approximately 10,000 to 11,000 tons of carrying capacity, a significant carrying capacity, is presently on its closed season trip. We believe that these vessels will not be operating in accordance with the same type of regulatory program that the U.S. flag vessels are operating under.

In addition we are concerned about the impact on U.S. tuna vessel owners, should our Government fail to take effective action as required by existing laws. Also, we are concerned about the reaction of countries who are members of the IATTC, to the failure of the United States to act effectively on this challenge. In our April memorandum, we recorded other concerns on the impact of the failure by the United States and other member countries of the IATTC to prevent meaningful and illegal foreign fishing operations within the IATTC Yellowfin Tuna Regulatory Area.

Mr. Chairman, we are prepared to provide additional information to the staff counsel of this subcommittee regarding our concern about the threat to the conservation program of the IATTC. We think it important for this subcommittee to contact the director of investigations of the IATTC for information regarding such program.

Mr. DINGELL. The Chair will direct counsel of the subcommittee to take that step forthwith.

Mr. FELANDO. Also, we suggest that this subcommittee contact the U.S. Commissioners to the IATTC and obtain their views on this subject. We note with deep regret, the unfortunate death of William Terry, Chairman of the U. S. Commissioners to the IATTC.

Mr. DINGELL. The Chair notes again your suggestion for contacting the Commissioner's, which will also be done.

Mr. FELANDO. Mr. Terry was fully aware of the problems we have raised today, and would have been in an excellent position to provide information and advice to this subcommittee.

On February 23, 1973, ATA representatives met with Robert White, Director of NOAA and officials of the National Marine Fisheries Service (NMFS) in San Diego, aboard the tuna vessel *Kerri M.* At that time, we advised Mr. White of our concern about the threat of foreign fishing violations, which is best illustrated by the conduct of the M/V *Atlantis*, a Dutch flag tuna vessel. We suggested that the United States make it known to other countries of its intent to take forceful actions to strengthen the conservation program, to deny its markets to violators. We also suggested that the United States make its enforcement program available to all countries who fish on a meaningful scale on tuna resources in the Eastern Pacific, so that all vessels will operate on an equal and fair basis. We complained about the inequity of having U.S. citizens operate aboard foreign flag vessels subject to a different surveillance system, in fact, no system, than U.S. citizens aboard U.S. flag vessels. Specifically, we suggested that a Space Satellite could be used to enhance the present radio reporting system applicable to U.S. flag vessels only and make it available to all flag tuna vessels. To explain further the details of this enforcement system, I think it advisable that representatives of the NMFS, the U.S. Coast Guard and the U.S. Navy be called in by this subcommittee to explain how they enforce the U.S. regulations against U.S. vessels in an area of the Pacific Ocean that involves about 6 million square miles. The system works against U.S. flag vessels, we think it should be expanded to include all tuna vessels operating in the Pacific regulatory area.

Mr. DINGELL. The Chair will direct the staff to look into that point and also you may present further suggestions in that manner.

Mr. FELANDO. Mr. Chairman, I have deliberately avoided the inclusion of many details concerning the U.S. tuna fishery believing that such data would best be provided by attachments or upon request by staff counsel. The ATA is prepared to cooperate to the utmost degree to have our Government perform its duty in protecting a highly successful tuna fishery conservation regime. By effectively and timely responding to such challenge, we also believe that a healthy, strong American tuna industry will be preserved.

This, then, Mr. Chairman, is our petition. It is to have the laws and treaties passed by Congress enforced, to have the policy of Congress implemented, to have our Government make the tough decisions—decisions that will be in fact protect a successful, international tuna conservation program that has been brought about “pursuant to a multilateral agreement to which the United States is a signatory

party, the purpose of which is to conserve or protect the living resources of the sea."

Thank you.

Mr. Chairman, before I conclude my presentation and before I go into detail in the attachments to my statement, I have brought with me Mr. Joe Medina and his wife, Carolyn.

Joe Medina, Jr., is the president of the American Tunaboat Association. He just completed a maiden voyage on a tuna vessel that just came in the fleet this year. He has delayed departure of his vessel for the specific purpose of coming here and giving his views with regard to foreign fishing violations in the regulatory area, which he witnessed, and also his view with respect to the conservation program.

Interestingly enough, Mrs. Medina, Carolyn also went out on the maiden voyage of the *Captain Joe Medina*, which is the vessel named after Joe's father. Mrs. Medina also wanted to appear here today to give testimony regarding what she saw during that maiden trip. And, also information concerning the conservation program.

I would like to have them make some very short statements. They did not have prepared statements, but I would like now for the Chairman to have Mr. and Mrs. Medina make their statements.

Mr. DINGELL. That is entirely appropriate.

The Chair also notes that Captain Medina assisted in perfecting the Medina net and some of the excellent practices involved in the American commercial fishing industry to avoid loss of porpoises during the fishing operation.

We look forward to hearing from you and your other endeavors in the future.

Mr. MEDINA. Thank you.

Madam Chairman and Mr. Dingell, my Dad came here and he was a pioneer in the industry and he came to a committee hearing one time on the tariff. And, the first thing he said was that he helped catch the first tuna ever packed and canned and if he ever knew it would cause all this trouble, he would have thrown the fish back.

First of all, I have submitted an affidavit stating that I saw the *Atlantis*, about 3 miles from where we were fishing. We were in an area where we could fish. He had gone in after the quota system came out, and the area he was fishing in was strictly yellowfin. We saw him twice. I also heard him on the radio talking. I knew what he was catching. I know he made a trip, which solely consisted of yellowfin tuna.

First of all, when the conservation program came out, like all fishermen, I was against it. We did not agree with the figures and still do not on some of them. But at that time, our fleet was not built up. Today it is modernized. We are over-built. We have a large fleet and believe me without the conservation program we have today, I think this industry would be doomed.

Sure we can all go foreign and get away from the regulations, but without the conservation program all the fishermen know we will be ruined.



Mr. Chairman, we are all for the conservation program and against going foreign. Believe me, the only reason these boats are going foreign is to get away from regulations. We are very worried about this. I have been fishing outside the regulatory area for 5 years and not have yet to see a foreign vessel fishing out there with us. They even joke about it, the Canadian and Mexicans. They call it Mexican or Canadian skipjack, which is yellowfin tuna.

We want to know what our Government is going to do about it. We are following the rules and want to know why all the other countries are not following them just like we are.

I will be glad to answer any questions that you have.

Mr. DINGELL. Thank you.

Mrs. Medina?

Mrs. MEDINA. Good afternoon.

I had the opportunity this year to take a trip with my husband on our boat's maiden voyage. I was on the boat approximately 37 days and I have gotten a good education.

First of all, I would like to say I have heard a lot about the foreign fishing violations from my husband and several of the captains in the industry—also the wives, who complained about the unfairness of these violations.

While we were being regulated, the foreign fisheries are fishing within the regulated area and on this trip, I actually had the chance to witness this. I saw the *Atlantis* in the area.

May I add, they were fishing. They were not just passing through. Of course, this did not surprise me because I really had no doubt in my mind from the time the boat came out that this boat was built strictly for fishing inside the regulatory area. It was registered foreign for this, and I truly believe it was to get out from under the conservation program.

Now, this had been the gossip in the industry, but it was substantiated when I saw the vessel in the area. Our crew members were very discouraged. Their questions and their attitudes are what kind of conservation program do we have? They can fish inside the line all the time, all year round and we have to go outside and fight the elements.

What I want to tell you now is that I have a brother-in-law that is fishing for Mexico and we got into a discussion a few months back. I wanted to know why he was fishing for them. His reply was are you kidding, I can fish in the area all the time, and I do not have any problems and he said furthermore, in a few years Mexico is going to be taking over this area and you know what you can do with that boat of yours.

Well, at that time we were building this boat and I told him if you like Mexico so well, why not pack up and move down there if that is what you think.

We truly believe in the conservation program. When it was imposed, like my husband said in 1966, the fishermen were quite disturbed about it. They did not like the idea of the Government controlling any part of their industry mainly because the fleet was very small and they did not see any problem with the depletion of fish.



In the past few years their attitude has changed as the industry has grown tremendously. I am speaking of the building of super seiners and it is their opinion that the conservation program is really a Godsend. They feel that if the violations are not controlled in the area within a few years there will be no fish to catch.

What I want to know, as a wife of a fisherman, is what is our Government going to do about it?

I think the United States must decide whether it wants trade or conservation.

Thank you.

Mr. FELANDO. Mr. Harold Cary was unable to make it today, because he was required to go to a hospital in Los Angeles yesterday.

I have a very short 2-page statement I would like to read for him and with the conclusion of that statement, that will complete our presentation today.

#### STATEMENT OF HAROLD F. CARY, VICE PRESIDENT, OCEAN FISHERIES, INC.

I am making this statement as Vice President of Ocean Fisheries, Inc. one of the largest operators of U.S. flag tuna vessels and the only company devoted to tuna fishing exclusively as a public company.

I formerly served as General Manager of the American Tunaboat Association and appeared before the United States Senate Foreign Relations Committee in late 1948, when the first appropriations and activation of the Inter American Tropical Tuna Commission were under consideration. The IATTC was subsequently established by an open-end convention between the United States and Costa Rica. Participation was open to any and all nations whose vessels fished the light meat tuna species of the Eastern Tropical Pacific Ocean.

The primary purpose of the convention was conservation of the species. The United States tuna fishery, as well as that of other nations, depended upon the preservation of fishery and bait stocks to insure its ability to continue as a viable, growing industry.

The principle of multi-national participation was a part of the open-end convention. The conduct of research and scientific findings under an international commission backed by a strong scientific staff would not only determine the condition of stocks but the steps necessary to their preservation to the end that maximum sustainable yield could be attained and preserved.

While regulation was discussed from the outset, none was considered necessary until 1966. The industry did not applaud regulation but its leadership accepted the scientific findings and operated within the constraints imposed. Fishermen generally considered stock assessments to be too low and quotas established as too low based upon experience in this enormous area of the Pacific Ocean.

The IATTC staffs continued their studies and, as the quota figures clearly show, increased the annual quotas. It is significant that the 1966 (first) quota was 79,300 tons while the 1973 (latest) quota is for 160,000 tons—double the original quota.

Since the beginnings of the IATTC, there have been innumerable meetings and discussions respecting regulation.

Implicit, as well as explicit understandings always were the enforcement of regulations (quotas) would be impartially applied with respect to all nations which participated in the fishery in what was called the Commission Yellowfin Regulatory Area (CYRA).

It was always clear that should enforcement of regulations vary from country to country, then the penalty of enforcement would fall most heavily upon the vessels of that government doing the best job of surveillance and enforcement. There is no doubt that enforcement of regulations by agencies of the United States Government has been the most active, aggressive and effective. There is a sharp difference in enforcement by other countries and as mentioned in Business Week article of December 16, 1972—operating a vessel from a country that hasn't signed international fishing quota agreements is one way to increase earnings and gain an advantage.

What all this means to our company and to all U.S. tuna fishing vessel owners is that all regulations and enforcement should be equal irrespective of what flag the tuna fishing vessel flies.

United States tuna fishermen actually opened just about the entirety of the tuna fishing areas of the Eastern Tropical Pacific Ocean. This does not mean they are entitled to exclusive rights or to be treated preferentially. It does mean clearly that they have the right to be treated equally in terms of regulation enforcement—no more and no less.

If a foreign fishing vessel is subject to no regulation or little regulation, it is more profitable to operate U. S. vessels from another country to claim the preference.

Just as important or even more so is manpower.

Tuna fishing is a talent-oriented business. If a fishing vessel skipper or fisherman has greater freedom of opportunity to fish outside the United States and not be bound by the United States regulation, he will be disposed to seize it. Loss of men and vessels would undermine and in time eliminate our greatest United States high seas fishery.

None of this was intended at the outset or in the nearly 25 subsequent years of operation of the IATTC. As onerous as we often consider it, we do need to implement the results of scientific research findings. We ask only that this Committee seek a fair means of equality of treatment and that it ask those charged with enforcement in the United States to meet with all participant nations to insure that this is done.

The machinery and channels for doing it are there.

Mr. FELANDO. That concludes the statement of Mr. Cary's.

Mr. Chairman, appended to my statement are affidavits that I prepared with regard to the facts concerning the present construction of tuna vessels in the United States. There are 14 under construction. The information that I have is that the seven or 50 percent of them are intended to go foreign.

The second affidavit, I provided to the committee deals with the construction, foreign, the number of tuna vessels that are being built in foreign countries and we believe will be entering this fishery.

We have also provided additional information with regard to the name, the size, and the origin of the tuna fleet of Mexico, Costa Rica, Panama, France, Canada, Spain, and Japan and I think the rest will speak for itself.

Mr. DINGELL. Well, without objection the documents referred to will be made a part of the record at this point.

[The information may be found on page 16.]

Mr. FELANDO. In addition I have provided a document indicating the number, the name and details concerning the foreign flag vessels, that are, as we call it in the industry super seiners, that do operate or have operated inside the regulatory area.

Finally, for the information of the subcommittee, we have provided background data concerning the imports in the United States and the relationship with tuna.

In addition, we have provided some information regarding the tuna industry. I would just like to say that based on the values of 1972, that is the value of the canned tuna production, human and pet food consumption, the value of the landings dockside, the value to the fisherman and the value of imports of all forms, you are talking about a market in the United States of something close to \$1.2 billion based on those values.

Mr. DINGELL. Without objection, those documents will be inserted in the record at this point.

[The material follows:]

BACKGROUND INFORMATION, RELATIVE POSITION OF TUNA IMPORTS TO TOTAL U.S. IMPORTS

TABLE 1.<sup>1</sup>—Value of imports in general, all commodities

| Year:     | Total            |
|-----------|------------------|
| 1972..... | \$55,555,237,957 |
| 1971..... | 45,602,083,482   |
| 1970..... | 39,963,196,206   |
| 1969..... | 36,051,832,691   |

TABLE 2.<sup>1</sup>—Value of imports, fish and fish preparations (commodity code, div. 03)

|           |                 |
|-----------|-----------------|
| 1972..... | \$1,208,826,868 |
| 1971..... | 879,154,286     |
| 1970..... | 794,369,208     |
| 1969..... | 692,429,715     |

TABLE 3.<sup>1</sup>—Value of imports, tuna, all forms <sup>2</sup>

|           |               |
|-----------|---------------|
| 1972..... | \$219,302,103 |
| 1971..... | 135,652,230   |
| 1970..... | 126,373,214   |
| 1969..... | 97,235,980    |

<sup>1</sup> U.S. Bureau of the Census, U.S. Imports—General and consumption, schedule A commodity and country, reports FT 135-72-12; FT 135-71-12; FT 135-70-12 and FT 135-69-12. The highest value reported for "General imports" or "Imports for consumption" was used in the above tables.

<sup>2</sup> Commodity Code Items: 031-1004; 031-1014; 031-1018; 031-1021; 0320-105; 0320-124; 0320-128; 03201-60; 03201-67.

BACKGROUND INFORMATION—VALUE OF CANNED TUNA PRODUCT AND LANDINGS

TABLE 4.—WHOLESALE VALUE—SELECTED YEARS—U.S. CANNED FISH PRODUCTION FOR HUMAN CONSUMPTION AND SHARE THEREOF ATTRIBUTED TO TUNA, TUNA-LIKE PRODUCTS  
[In dollars]

| Year      | All canned fish products | Tuna-like products | Percent total |
|-----------|--------------------------|--------------------|---------------|
| 1972..... | \$847,611,792            | \$637,301,841      | 73.9          |
| 1971..... | 656,532,430              | 416,612,664        | 63.5          |
| 1961..... | 384,196,236              | 190,293,401        | 45.5          |
| 1951..... | 301,210,000              | 99,046,206         | 32.9          |
| 1941..... | 138,684,000              | 19,397,887         | 13.9          |

Sources: Canned fishery, products, annual summaries, current fisheries statistics No. 6101 (1972); C.F.S. No. 5901 (1971); C.F.S. No. 2862 (1961); C.F.S. No. 1517 (1951) and C.F.S. No. 497 (1941).

TABLE 5.—LANDINGS AND VALUE DOCKSIDE OF TUNA, TUNA-LIKE FISH BY U.S. FLAG VESSELS IN CALIFORNIA, PUERTO RICO, HAWAII AND AMERICAN SAMOA

| Year      | Landings (short tons) | Value (dollars) |
|-----------|-----------------------|-----------------|
| 1972..... | 273,896               | \$113,711,222   |
| 1971..... | 235,054               | 93,650,016      |
| 1970..... | 223,617               | 80,531,296      |
| 1969..... | 200,797               | 62,269,852      |

Source: National Marine Fisheries Service (NMFS).

Mr. FELANDO. In addition, I have broken down in 1972 from the 85 different fishery items that are listed in a Department of Com-

merce, Bureau of Census publication concerning those items imported in the United States from the countries of Spain and the Netherlands. So that perhaps this might give an indication to the subcommittee about the facts regarding imports from those two countries, which we feel have violated the regulatory programs.

Mr. DINGELL. They will be placed in the record at this point.

[The material follows:]

1972—VALUE OF IMPORTS, FISH AND FISH PREPARATIONS FROM SPAIN AND NETHERLANDS  
[in dollars]

| Commodity code | Spain     | Netherlands | Commodity code        | Spain       | Netherlands |
|----------------|-----------|-------------|-----------------------|-------------|-------------|
| 031-1004       | 129,084   |             | 031-3010              |             |             |
| 031-1014       | 93,508    |             | 031-3020              | 20,821      |             |
| 031-1018       | 1,954,657 |             | 031-3030              |             |             |
| 031-1021       | 14,048    | 106,767     | 031-3040              | 106,892     | 100,779     |
| 031-1024       |           |             | 031-3050              | 113,607     | 65,348      |
| 031-1027       |           | 508         | 031-3060              | 4,856       | 78,793      |
|                |           | (574)       | 031-3070              | 971,883     | 63,684      |
| 031-1029       |           | 128,823     | 031-3080              | 123,057     |             |
| 031-1035       | 44,791    | 660         | 031-3090              | 2,076       |             |
| 031-1040       |           | 22,557      | Total                 | 1,343,216   | 308,604     |
| 031-1043       | 36,493    | 9,240       | 0320-105 <sup>1</sup> | 734         |             |
| 031-1046       |           | 27,767      | 0320-110              |             | 250,955     |
| 031-1048       |           | 1,725       | 0320-115              |             |             |
| 031-1050       |           |             | 0320-120              | 64,166      | 3,390       |
| 031-1052       |           |             | 0320-124 <sup>1</sup> | 271,797     |             |
| 031-1054       | 40,106    | 2,127,496   |                       | (378,234)   |             |
| 031-1056       |           | 87,212      | 0320-128 <sup>1</sup> | 2,485       |             |
| 031-1058       | 34,388    | 18,407      |                       | (128,202)   |             |
| 031-1060       |           | 4,745       | 0320-130              | 391,263     | 950         |
| 031-1062       |           | 3,091       |                       | (350,902)   |             |
| 031-1064       |           | 17,927      | 0320-132              | 4,108,083   | 7,054       |
| 031-1066       |           |             |                       | (4,184,273) |             |
| 031-1068       |           |             | 0320-135              | 2,033       |             |
| 031-1070       | 31,782    | 328,563     |                       | (4,983)     |             |
|                |           | (328,582)   | 0320-140              | 949,770     |             |
| 031-1072       | 15,966    | 161,110     |                       | (938,988)   |             |
|                |           | (161,256)   | 0320-142              | 340,484     |             |
| 031-1074       |           |             |                       | (349,634)   |             |
| 031-1078       |           | 1,348,282   | 0320-145              | 14,018      |             |
| 031-1080       |           | 5,065       | 0320-148              |             |             |
| 031-1082       |           | 435         | 0320-150              |             |             |
| 031-1084       |           | 2,300,404   | 0320-152              |             |             |
| 031-1086       |           | 17,640      | 0320-155              |             |             |
| 031-1088       |           | 7,210       | 0320-160 <sup>1</sup> |             |             |
| 031-1090       | 76,066    | 792,149     | 0320-167 <sup>1</sup> |             |             |
| 031-1092       |           | 344         | 0320-175              | 43,037      |             |
| 031-1094       |           |             | 0320-180              | 2,141       | 1,364       |
| 031-2005       | 1,337     |             | Total                 | 6,510,094   | 263,713     |
| 031-2010       |           |             | 0320-205              | 63,952      |             |
| 031-2015       | 4,298,204 |             | 0320-210              |             | (9,900)     |
| 031-2020       | 459,113   |             | 0320-215              |             |             |
| 031-2025       |           | 63,117      | 0320-220              |             |             |
| 031-2030       |           | 10,264      | 0320-225              |             |             |
| 031-2035       |           |             | 0320-230              | 3,498       |             |
| 031-2040       |           |             | 0320-235              | 4,174       | 271         |
| 031-2045       |           | 33,707      | 0320-243              | 16,554      | 994         |
| 031-2050       |           | 1,739       | 0320-247              |             |             |
| 031-2055       |           | 10,507      | 0320-250              | 1,784,360   | 23,631      |
|                |           |             | 0320-260              |             |             |
| Total          | 7,229,543 | 7,637,692   | Total                 | 1,872,538   | 34,796      |
|                |           |             | Grand total           | 16,955,391  | 8,244,805   |

<sup>1</sup> Tuna.

Note 1.—Amounts in parenthesis reflects value as "General import" grand total reflects value of highest amount whether as "General import" or as "Imports for consumption".

Source: U.S. Bureau of the Census, U.S. Imports—general and consumption, schedule A Commodity and country, reports FT. 135—72-12.



Mr. DINGELL. Mr. Royal, it is a pleasure to welcome you back to the committee.

Mr. ROYAL. Thank you, Mr. Chairman.

Madam Chairman and Mr. Dingell, gentlemen of the committee it is indeed my pleasure and honor that we are back before this honorable body once again after some absence.

First off, I would like to say that my name is John Royal and I am executive secretary treasurer of the Fishermen and Allied Workers Union, Local No. 33 in San Pedro, Calif. I have held this position for 15 years and have been advisor to the Government on fisheries, during those years.

Secondly, I would like to state, for the record, I support fully the verbal statement presented by Mr. Felando and others as well as his complete written statement.

I do not have a written statement here today. I have been involved for the past 2 weeks on the 20th Biennial Convention of the ILWU in San Francisco.

I would like now to make the request that, if possible, at a later date, after hearing the presentations of the Government, State Department and NOAA and other interested parties to submit a written statement.

Mr. DINGELL. The Chair intends the record to be kept open. Certainly, all interested persons will have an opportunity to make appropriate insertions in the record.

Mr. ROYAL. Thank you very much, Mr. Chairman.

As I am sure this committee is well aware, since the end of World War II, the American fishermen has been pretty well discriminated against in almost any form that you can think of. We have been shot at, seized. We have been subjected to discrimination because of excess imports over the years.

How we have survived up to now, I do not know.

The fact of the matter is that the imposition of unilateral regulations by our Government on us to set the pattern for other nationals of other countries to follow has not worked out very well, only in the sense it has hurt the American fishermen and boat-owners.

What I think we need here today, if we are to protect the remnants of the American tuna industry, we are going to need some immediate action in the sense you are going to have to stop this foreign flag-run away operation or the flag of convenience.

This, to me, Mr. Chairman, this seems to be the final straw that breaks the camels back. There is a total lack of international regulations and international enforcement.

It is true that the Inter-American Tropical Tuna Commission has proved to be a wonderful mechanism for regulation.

The big objection we find as American fisherman is that we are the ones being subjected to these regulations and no one else.

Consequently, people are now looking to move elsewhere and an exodus has started first with some key men and now with the movement of vessels.

Should this be allowed to continue to happen and not stop immediately, the American fishermen, who is part of the American

labor movement, will be left on the docks and totally unemployed and he will be replaced by foreign fishermen of other countries and under other flags.

One of the problems we have here, is that our people are of various ethnic backgrounds, have language barriers, lack of education and to rehabilitate these people and put them to work in the other industries, would be an exercise in futility.

On top of that, they do not want that. They want to be American fishermen and I just don't know how strong to express myself to this committee of the importance of this thing. We view it very gravely, and again we as American fishermen say that we think that we are again going to be the sacrificial lamb on an economic political altar which we have lived with, for the past 15 or 18 years.

Our people have not only seniority, but vested interest in their rights for livelihood in this industry, but their health and welfare plans their jobs to take care of their families and children and their pension plans will be lost.

If these vessels go foreign flag, this will all come to a sudden halt. These people will be left helpless and become wards of the State or Government, which they do not want and we do not want.

I just found out, as of yesterday, that an agreement had been reached between the Government or NOAA and the representative of the West Gate Corp., who supposedly own the vessel *Atlantis* in question and the *Mariner* and the fish in question, which is probably on its way to California now.

In just reviewing that rather briefly, not being a lawyer, I feel that the agreement itself is very weak. I feel the agreement does not impose the same rules and regulations upon the *Atlantis*, its catch of fish and possibly the *Mariner* in the future, that American fishermen are subjected to under the Inter-American Tropical Tuna Fish regulations.

Somebody should take a look at this thing here and the least that should come out of this if these people are operating under a foreign flag and do fish illegally and take yellowfin tuna illegally. They should be expected to face the same regulations, no less, and the same penalty, no less, as the American tuna fishermen and the boatowners face.

I know that our Government is very concerned about their image and are very concerned about setting the example for the nationals of other countries to follow the regulations of a conservation program or regime. But unfortunately, the only ones that pay the penalty is us, and I think one of the examples I might use is our Government regulated the American whaler out of business to set the example for the rest of the world, but had no effect, if any, upon what is going on in the international whaling scene today.

Mr. Chairman, we think it would be a tragedy to have this happen to the American tuna industry.

I suppose one could go on in great detail and present many examples, but again, getting back to this agreement with West Gate and the Government or NOAA, as I read it, the penalty involved here is the confiscation of the catch of fish but not to exceed that amount.

I would like to add, if I were a bank robber and I got \$100,000 and if I walked out and nobody caught me, I got away clean. If I was caught by the authorities, that would be like saying, just go back to the bank and give them their money back.

I do not think that is a sufficient penalty and is not consistent with what we live with today as American citizens.

I would like for the record to read a brief resolution on this problem as follows as well as others facing the American fishermen, which was brought to the 20th Biannual Convention of the International Longshoremen and Warehousemen Union in San Francisco, California, April 30 to May 4, 1973. It reads: Resolution on foreign flag runaway:

Whereas the government of the United States is a member of the Inter-American Tropical Tuna Commission along with several other nations, and, whereas, the purpose of this Commission is to conserve the stocks of yellow fin tuna that migrate in the Eastern Tropical Pacific; and, whereas, regulations and quotas were implemented in 1966 to protect this species of tuna; and, whereas, in 1972 the U. S. passed a Marine Mammals Protection Act to protect various marine mammals; and, whereas, some U. S. tuna boat owners and companies, in order to avoid the tuna regulations and Marine Mammals Protection Act and other laws are placing their vessels under foreign flag registry (Dutch)—and, whereas, if this trend is not stopped immediately the end result will be the destruction of the yellow fin tuna stock, but even more importantly, the end of employment for the American fishermen; therefore to be resolved, that this union go on record insisting that our government immediately take all necessary steps to stop this runaway operation, and negotiate with those countries whose flags these vessels are flying, and third party nations which are being used for trans-shipment of fish; and be it further resolved, that any fishery product finding its way into the U.S. from those countries which provide a flag of convenience be denied entry into the U. S., and that copies of this resolution be sent to President Nixon, the U. S. Department of State and Governor Reagan of California.

I feel that the fact that this was passed unanimously by this convention shows the great concern they have and I think this concern is shared, not only by the fishermen, the longshoremen and I will not bore the committee because they well know that all of labor is concerned about the runaway ship, the runaway flag, the runaway technology, and most of all the runaway jobs.

We are down on our knees now and we have not received, and I repeat we have not received just and adequate and proper protection since the end of World War II from our Government.

I know there are some people in our Government, who have been breaking their backs to assist us in our problems, but unfortunately the people in the position to make the decisions have not implemented the legislation that we worked very hard to get passed to give them the necessary ammunition and to bring about the economic sanctions against those governments that discriminate against Americans.

I do not know what we will have to do to get the attention that this fully deserves, but I think I would close my remarks by saying that if this Committee can exercise any effort whatsoever, and I am sure they can, and I am very hopeful that they will to bring pressure to bear on the top people in our Government to put a stop to this thing immediately, we will be most grateful.

If they cannot and our Government does not then, I think the American tuna industry as we have known it for many, many years



will cease to be and the problems facing our Government, not only in the State of California, but the Government as a whole, is going to be further compounded, because of the loss of employment and because it will further bring about the imbalance of trade and add to our current international and national financial problems.

What we need here is for our Government to take the bull by the horns and enter into, if need be, where needed bilateral, multilateral international agreements that call for a proper conservation to maintain these stocks for posterity, and uniform and proper regulations to be enforced internationally.

This idea of me telling my kid that they cannot pick the apricots because they are green and then the neighbors kids come over the fence and pick them, well by the time they are ripe, there will be none left for my kids.

Do your utmost to listen to our plea here today on our concerns.

We saw what has happened to the U.S. merchant marine and many other industries and this is the last blow we can stand.

Mr. DINGELL. Thank you.

We will now hear from Mr. Ralph Spinello.

Mr. SPINELLO. Mr. Chairman, my name is Ralph Spinello. I am the secretary-business agent of the Seine and Line Fishermen's Union of San Pedro, which is affiliated with the Seafarers International Union of North America, AFL-CIO.

My union is composed of some 300 members engaged in all phases of U.S. tuna fishing fleet operations.

I am pleased to have this opportunity to testify before the Fisheries and Wildlife Conservation and Environment Subcommittee of the House Merchant Marine and Fisheries Committee on the grave problems facing the U.S. west coast tuna fleet.

I am also testifying today on behalf of the Cannery Workers and Fishermen's Union of San Diego, SIUNA, AFL-CIO, and for Steve Edney, chairman of the Fishermen and Cannery Workers Conference, SIUNA, AFL-CIO.

We wish to congratulate this subcommittee for its prompt action in conducting hearings on the serious effects that foreign competition and operators are having on the west coast U.S. tuna fleet.

At the present time, the continued operation of this U.S. fleet is threatened by these practices and unless remedial action is taken in the very near future, the economic benefits provided by this fleet could be lost to the United States.

The U.S. west coast tuna fleet is an important asset to the economic well-being of the west coast communities of San Pedro and San Diego. Not only do these fleets provide employment to U.S. shipbuilders and to workers in allied industries.

At the present time, the West Coast U.S. tuna fleet is composed of over 170 tuna vessels valued at more than \$150 million. While some of these vessels are the proprietary fleets of major food conglomerates, many vessels are owned and operated by private individuals or by families.

This U.S. owned, operated, and built tuna fleet provides a major food supply for the United States. At a time when other U.S. fishing fleets are stagnating or declining, the U.S. flag tuna fleet on the West Coast has been kept modern and efficient.



Today the United States must import three-fifths of the fish we eat. In recent years, the United States has dropped from the world's first ranked fishing nation to its seventh. Were it not for the West Coast tuna fleet, it is likely the U.S. standing would be far lower.

Faced with the high cost of meat and poultry, Americans are increasingly turning to seafood as a major part of their diets. If the U.S. balance of payments is not to be adversely affected by the need to import much of this fish we consume, then the contributions of U.S. fishing fleets need to be increased, not reduced.

Last year, before the latest surge in U.S. fish demand, the balance of payments deficit in fish products was over \$1 billion.

Thus we face a real danger that in the future the United States will grow more dependent, for a vital food source, on foreign crews and vessels. Not only will this development deny an opportunity for gainful employment for thousands of Americans, but it will also be harmful to the nation's economy and trade.

It is clear that the Nation's policy must be to encourage and promote, through every means possible, the development of a strong, competitive U.S. fishing industry.

Yet today, on the U.S. West Coast, one of the largest and most modern U.S. fleets is threatened with competitive elimination by foreign runaways, and by foreign operators, who flaunt and openly violate international fishing treaties regarding fish conservation.

While the U.S. tuna fleet has not yet been seriously harmed by these problems, the time to act is now, before serious or irreparable harm to the U.S. West Coast tuna fleet can occur.

We face a number of problems on the West Coast.

Runaway flag fishing vessels.

The problem of runaway flag ships, which for so many years has operated to the detriment of the oceangoing U.S. merchant marine, is now becoming a threat to the U.S. West Coast fishing fleet also. U.S. operators are now transferring their vessels to runaway flags, which have lenient tax laws and which have few if any manning, safety, or conservation standards to abide by.

So far, two U.S. fishing vessels have runaway to the foreign flag of the Netherlands-Antilles. Other fishing vessel operations are contemplating similar action, even for ships still being built.

These runaway flag fishing vessels could mark the beginning of a mass exodus of vessels to foreign flag nations which do not require the same manning and operating standards as the United States.

With substandard crews and few, if any, operating and conservation requirements, these vessels can compete at costs below those attainable by American operators. Faced with this low cost competition, American operators must choose between the further loss of business or whether to also runaway to a foreign flag.

In either case, the U.S. economy suffers as more foreign goods are bought and as U.S. employment and economic growth suffers.

If U.S. vessels respond to this threat by moving to foreign flags, the West Coast U.S. tuna fleet could be destroyed. This is particularly true if the proprietary fishing vessels of the major food conglomerates transfer to foreign control.

Should this happen, it would put some of the largest U.S. fishing vessels under foreign flags. And it would make it almost impossible for smaller family or privately owned vessels remaining under the U.S. flag to compete. These smaller U.S. vessels would be the first to be put out of business by the runaway flag fishermen.

Thus, it is imperative that this problem be dealt with immediately, before it begins to take a larger toll of the U.S. West Coast tuna fleet.

#### VIOLATION OF INTERNATIONAL FISHING TREATIES

A second concern, which is in large part due to the runaway flag problem, is the disregard by runaway flag operators of international treaties which govern the fishing of migratory fish species beyond territorial waters.

These international fishing and conservation regulations, established under conventions such as the Inter-American Tropical Tuna Convention (IATTC), are designed to preserve and foster the fish resources of the ocean.

Member nations of IATTC, including the United States, seek by international agreement to preserve migratory species, so that nations do not seek to achieve the same purpose by unilateral extensions of their territorial sea boundaries.

This multilateral approach for the control of migratory ocean species has been adopted by the United States as its position at the upcoming Law of the Seas Conference.

However, the actions by a foreign flag runaway vessel may destroy the U.S. position on fisheries and the progress that has been made in multilateral fishing species control.

In a recent case, a runaway flag tuna vessel flagrantly violated the IATTC laws, and fished for tuna in a prohibited area. This foreign flag vessel was seeking to maximize its catch at the expense of international conservation laws and the U.S. fishing fleet, which obeys the IATTC rules.

If foreign runaways increase in numbers and if they continue to violate international fishing treaties, then the rest of the U.S. fleet is in danger.

As long as foreign runaways can register abroad, in nations that are not a party to and do not abide by the rules of international fish conservation, the U.S. tuna fleet will be at a competitive and economic advantage.

The Congress must realize that fish conservation, applied to one nation, can only be detrimental to that nation's fleet.

Fishing conservation entails extra costs, to fish in less abundant areas, to go further to catch fish, and to use expensive nets that catch only tuna.

Yet the U.S. tuna fishing fleet is willing to follow these practices, as long as other nation's fishing fleets must also. That is fair and equitable.

The practices of foreign runaway fishing vessels in fishing contrary to international fishing rules is not equitable and is extremely harmful to the American tuna fleet.

## A RESPONSE TO FISHERY VIOLATIONS AND RUNAWAYS

In the face of the increased likelihood of runaway flag tuna fishing vessels and their subsequent fishing of tuna in violation of IATTC and other international conventions, it is imperative that Congress and the administration act to prevent this situation from adversely affecting the U.S. flag west coast tuna fleet.

The administration should immediately seek, under the provision of Public Law 92-219, to prevent the importation into the United States of fish products from runaway flag vessels who fish in violation of international conventions.

The Congress should act to deny runaway flag vessels the tax advantages and loopholes that allow foreign vessels owned by U.S. operators to be a financial asset.

Finally, both Congress and the administration should insure that all conservation laws are applied equally to U.S. and foreign operators, and that they not be applied to U.S. operators until they also apply to foreign operators in the same trades.

These steps, coupled with close congressional scrutiny of runaway flag practices, will end this problem before it can grow to menace the entire U.S. flag west coast tuna fleet.

Thank you.

Mr. DINGELL. Thank you, very much.

The committee is grateful to all of you.

The Chair recognizes our chairman, Mrs. Sullivan.

Mrs. SULLIVAN. May I just ask a few questions, Mr. Chairman.

Mr. Felando, on page 1 of your affidavit you list the number of tuna vessels being built in Peru and England, Mexico and so forth. They are building these ships for the use of people within their own countries, are they not?

Mr. FELANDO. Yes.

Mrs. SULLIVAN. And will they be registered under the flag of the country in which they are built?

Mr. FELANDO. Yes.

Well, the Peruvian vessels are being built in England but will be built for the Peruvian flag.

Mrs. SULLIVAN. Do you know whether all of these 14 are going to be registered under foreign flag?

Mr. FELANDO. We have had indications that seven are, and as to another, I checked with the shipyard to determine whether the final decision has been made yet. I do not know the decision.

Mrs. SULLIVAN. They are being built for U.S. citizens?

Mr. FELANDO. Yes, for U.S. citizens.

Mrs. SULLIVAN. Can you tell us what percentage of world tuna market is represented by the U.S. fleet?

Mr. FELANDO. There is about 1.2 million tons of tuna, the principle species of tuna, that are caught throughout the world and the United States. The U.S. takes about 45 percent of this total catch for its market, at least that was true in 1971 and Japan about 30 percent. Between those two countries you are talking about 75 percent of the market.

Mrs. SULLIVAN. Of that percentage, how much of the catch caught by vessels under U.S. flag come back to this country, or do we ship our catch abroad to other countries?



Mr. FELANDO. Well, we have shipped some small quantities to Europe, I think a few years ago.

There may be some small quantities in 1972, but the bulk almost all of it historically, caught by U.S. flag vessels goes into the U.S. market.

Mr. SULLIVAN. Have you any idea which flag the Ralston Purina boats are registered? They have a canning plant I believe in America Samoa and also in California.

Mr. FELANDO. To my knowledge, the vessels that they have acquired recently are all under U.S. flag.

However, they have financed foreign flag vessels or have assisted them. It is my understanding they have assisted and financed and in some instances provide personnel or assistance to locate personnel, but I do not know of any foreign flag tuna vessels owned or operated by Van Camp Seafood, which is a division of that corporation.

Mrs. SULLIVAN. Can you supply, for the record, at a later time, how many tuna boats are owned by U.S. citizens and now registered under foreign flag?

Mr. FELANDO. Well, the only ones that we know of right now, are the *Atlantis*, and the *Mariner*.

Just what type of arrangements and direct ownership are involved in other type of vessels I will try to get that information for you.

Mrs. SULLIVAN. If you can, I would appreciate it.

Do you know how many of these or whether either of these have been financed or refinanced by the Export-Import Bank?

Mr. FELANDO. I think I was informed today that the *Atlantis* was involved in Export-Import Bank financing.

I do not know that for a fact, Mrs. Sullivan, but I have reason to believe that is the fact.

Mrs. SULLIVAN. Well, I think from the testimony given by all of you, it is about time for the United States to retaliate in some way. We have had testimony from him before and we are also going to hear from him again today, that is Ambassador McKernan, who does do the negotiating for the U.S. with other countries. He explained before, how it was impossible to get other countries to comply with our fishing conservation regulations that are good for all these countries too and it just brings up another example of what is happening. And, this does not affect you, but I think it affects all of us in one way or another, that is, to impound one of our ships under the U.S. flag when they are having a very difficult time of entering any port in Japan without paying excessive prices, and we are not retaliating in any way when a Japanese ship comes into our port.

If we become a little strong in asking for fair play, they are going to back down on what they are trying to do to us in some foreign ports. It is just like the problem you people have. If we can allow all of these vessels to register under a foreign flag and accept their catch, then why should anybody stay under the U.S. flag and pay the taxes that are expected to be paid by U.S. operation?

Why should they not go on and create a foreign subsidiary, escape taxes, and retain all the profit they need for operation purposes.

I think you have a real problem and I hope we can find some way to solve it.



Mr. FELANDO. Thank you, Madam Chairman.

I would just like to add one thing. I have a chart that illustrates to us anyway, and this chart was prepared by the Inter-American Tropical Tuna Commission, and deals with the production of the yellowfin in the regulatory area for 1972. In examination of the chart for the last week and a half of November and the month of December 1972, which is the traditional time when the U.S. fleet is in port for the holiday season and in preparation for the beginning of the season, January 1, 1973.

Nevertheless, in that 30 day period there was a significant increase in the production of yellowfin tuna.

We think this increase of 10,000 tons in about one month's time was due to the violations committed by foreign flag fishing vessels during the close of the season of 1972, particularly by Spanish and Canadian flag vessels.

The case of the *Atlantis* puts in sharp relief the problem that we are talking about. We hope that the committee will take effective and timely action.

I would like to provide this data to the committee.

Mr. DINGELL. Without objection, the documents referred to will be received and reviewed by counsel for appropriate insertion into the record.

[The information may be found on p. 116.]

Mr. ROYAL. Mr. Chairman, I wonder if I may leave you with one thought or question, because this is what the fishermen will ask me when I get back there and I am sure Mr. Spinello would agree.

The fish that is being unloaded in Punta Arenas, Costa Rico, taken illegally in the regulatory area is to be transshipped up to San Diego and we have been advised to the West Gate Cannery, if that was American flag vessel, it would be confiscated.

Are you going to confiscate the fish?

Mr. DINGELL. The committee will seek to get appropriate reply from the Department of State and NOAA.

The Chair notes that witnesses from those two Agencies are present with us, and will give us an appropriate answer as they testify.

Mr. Anderson?

Mr. ANDERSON. Thank you, Mr. Chairman.

I want to commend these witnesses here today. Several are from San Pedro in my congressional district, and some from San Diego, a little to the south.

I wish to amplify what they are saying. However, they say it is so much better; but these people are very hard-working, they are fighting for their very lives, fighting for a fair share. They want to do their work under the American flag and yet, we in the Congress, and probably more in the State Department, do not seem to want to recognize their problems.

This is not a little industry, Mr. Chairman. It is a big industry. We had a report last week that in spite of all the obstacles these people have had, San Pedro was the number 1 fishing area in total dollars and in volume in the United States, and San Diego was quite close behind.

In spite of the fact that these people have been subjected to hijacking by other nations; they have to compete with the problems of pollution; we are having them fish in regulated waters in the interest of conservation while their competitors are fishing in unregulated waters; in spite of all this, they continue to excel and contribute to our economy and society.

Now they have the new threat of the foreign flag, and we do not seem to do anything about it. The people in my district say "well, what are you fellows doing back there?" and I cannot tell them very much.

Mr. Chairman. I had thought that in the Marine Mammal Act of last year we had said that any regulations that our flag vessels operate under, would also apply to imports, and products, of any other country or any vessel under foreign flag.

Mr. DINGELL. The Chair will advise that the staff will look into the precise question.

As I read the law, the Marine Mammals Act does not apply to the taking of tuna at this particular time. There was a grace period given, and there are appropriate mechanisms to assure that our fishermen are not compelled to meet circumstances that are beyond their capacity.

Mr. ANDERSON. In the bill it states nothing can be imported. That is in conflict with the requirements of the Marine Mammal Protection Act.

Mr. DINGELL. The gentleman is correct. The Chair will advise it is the intention of the Chair, as he goes forward, to see that the staff goes into this.

Mr. ANDERSON. I want to welcome all of these people here today.

Mr. DINGELL. Any further questions?

Mr. GOODLING. Very briefly, Mr. Chairman.

Do you have any specific knowledge, any of you, as to the tuna population increasing, decreasing, or holding its own?

Mr. FELANDO. With respect to that, in our background memorandum to the committee we detail the results of the conservation program under the Inter-American Tropical Tuna Convention since 1966.

The quota in 1966 was 79,300, and for 1973 it was 160,000 tons, and we think this increase may be attributed to a number of things, but primarily we believe to the management program that prevails in the Pacific.

We think as long as this management program is in effect we think the populations will not be overfished in the eastern Pacific, or wherever there is an effective conservation regime.

In answer to your question, we believe that the populations to date are being safeguarded.

We think they are being seriously threatened by illegal fishing contrary to the conservation program.

Mr. GOODLING. What about the size of the individual fish? Has it increased or decreased?

Mr. FELANDO. Well, the average size, and all of this data is available at the Inter-American Tropical Tuna Commission, the average mean size has been 28 or 29 pounds. We have not seen any indication of any overfishing in the eastern tropical Pacific.

In fact, Mr. Goodling, the increase in the quota is a reflection of the fact that the resource is in good shape. Right now we are concerned that this resource is in good shape only because of the effective management program, but if things continue as they started here in the latter part of 1972, and the indication is that things will be getting worse by foreign fishing violations, we are not going to maintain this good record.

Mr. GOODLING. Do you retain all the tuna you catch, or return the small ones?

Mr. FELANDO. There are regulations in the State of California with respect to size limits, but we try to keep everything we catch, and generally the way that the fish schools are, you know pretty well when there are undersized tuna around, and you can avoid those schools.

Mr. GOODLING. One further question.

Do you have any knowledge of any foreign vessel ever having been fined by a foreign country for violating the Convention?

Mr. FELANDO. We heard one time a Mexican vessel was fined 500 pesos. We brought up violations concerning Mexico.

Mr. DINGELL. That is about \$125.

Mr. GOODLING. That is all.

Mr. DINGELL. Mrs. Sullivan?

Mrs. SULLIVAN. I have one question I would like to ask him before he leaves.

Can you tell me whether this has been a shortage in the catch of tuna?

Why has the price to the consumer of tuna almost doubled?

Mr. FELANDO. Well, I think you should ask perhaps those who process the fish. We have not really seen any significant increase in the price of fish.

We sell our fish pretty low, and I think we can demonstrate how low compared to the other producers in the world.

Let me say this. In 1971 I think the cases packed by U.S. canners was 22 million cases. In 1972 it came to 31 million cases, a significant increase.

Mrs. Sullivan, combined with this is the recognized fact that other markets are developing, about a 5 million case market in Europe and Japan is also a healthy consumer, as well.

What all these facts show, I do not know, but there is some evidence of a sellers market for the fish, and this might have contributed to increase the prices.

Mrs. SULLIVAN. The buyers market has just not increased in the last couple of months.

I asked this because I was around here when we had, all of a sudden, a rise in coffee back in 1954. We were relying on the foreign markets to supply the consumer with the coffee, and after a study of that we found that there was no shortage, although the main supplying country had all kinds of reasons why the market was going up each day. When we finally got the study completed it was just a nice big hoax on the consumer.

The minute we began to investigate the coffee prices began to drop. From that investigation, some 6 months or 1 year later, they formed an international coffee agreement with the United States



having veto power if the prices went completely out of line, which they did this year, and now we have stopped the agreement.

We were doing this to protect us, but also to help the nations who produce the coffee to be able to know how much to plant, and so forth, and not have a surplus or a shortage.

But on this, where the price of tuna has been going up for 6 months and more, is it because we are not getting as much catch in order to can it, or is it other factors?

Now, you people would know whether or not your catch was below normal.

Mr. FELANDO. No, our catch in 1972 was a record catch for the record established in statistics compiled by the National Marine and Fisheries Service.

Mrs. SULLIVAN. Do you know how the catch of other countries compare?

Mr. FELANDO. In 1972, I really do not know. However, I believe that there was a significant increase in the total catch, world catch, in 1972 over 1971.

We do provide for the processing in the United States around 34 to 40 percent of the raw material used for processing canned tuna in the United States.

Therefore, most of the fish that comes to the United States comes from other sources.

Mrs. SULLIVAN. Thank you. I think that gives us one answer that it was not a low catch.

Mr. FELANDO. I might say this, if you don't have a conservation program, then you can be concerned about high prices.

Mr. DINGELL. Any further questions?

Mr. Eckhardt is recognized.

Mr. ECKHARDT. Thank you, Mr. Chairman.

Do I gather from your testimony, Mr. Felando, that the major offenders with respect to violation of conservation practices are the Spanish ships, the Canadians, the Dutch, and certain of the Latin American countries, including Mexico?

Mr. FELANDO. Well, not exactly. I hope I did not state charges against all those countries, or at least from impressions in my statement.

Right now we have information that leads us to believe that in 1972 Canadian and Spanish flag vessels caused substantial violations of the conservation program.

We believe that we have provided sufficient information with respect to a Dutch flag vessel this year that violated these regulations.

We also have reason to believe that vessels flying the Panamanian flag also committed violations in 1972.

We have reason to believe, but I do not have good solid information for this Committee, that Spanish and Panamanian flag vessels are violating the rules right now.

Mr. ECKHARDT. Then they would be within that 40 percent of the total catch that would exclude the United States and Japan, to be a part of the remaining 20 percent.

Mr. FELANDO. No, the figures I gave you with respect to the total world market for the world, Japan consumes about 20 percent of the final processed product; 30 percent of all the tuna in 1971 went to



the marketplace of Japan, and 45 percent of all the tuna went to the marketplace of the United States.

Mr. ECKHARDT. Then you do not have any breakdown with respect to that percentage of the total catch that is caught on American flag vessels, total catch that is caught in say, Japanese-flag vessels, et cetera.

Mr. FELANDO. I have some information that I think will be of some interest to this committee as to the breakdown of the catch.

In 1971, roughly speaking, of the 1.2 million tons, about 658,000 metric tons was caught by Japanese flag vessels, and about 242,000 metric tons was caught by U.S. vessels.

Mr. ECKHARDT. I am not quick enough to figure the percentages.

Mr. FELANDO. It comes out roughly to about 20 percent for the United States, and about 40 percent, I think, for Japan.

Mr. ECKHARDT. Forty percent? Then this percentage of the catch which may be in violation of the conservation practices would be somewhere within the remaining 40 percent, pretty largely.

Mr. FELANDO. Well, Mr. Congressman, I think I have misled you by providing information about the total catch figure of the total world tuna area.

The area that we are talking about here is strictly in the Pacific.

That tonnage information I gave you talked about tuna catch in all of the world oceans, Pacific, Atlantic, Indian Oceans.

The regime that we are talking about specifically that we believe is in danger now is the fishing area of the eastern tropical Pacific area that is bordered by California in the north, to Chile in the south, midway to Hawaii. That is one part of the Pacific Ocean.

The total catch roughly in that area of all tunas, Mr. Congressman, is around 200,000 tons annually, an average annual catch.

Mr. ECKHARDT. What I am really getting to is about what percentage of that total catch is by those who are not in violation of the conservation practices?

Mr. FELANDO. In other words, what percentage of the catch in the eastern tropical Pacific is handled by member countries who comply with the regulatory programs?

Mr. ECKHARDT. That is right.

Mr. FELANDO. I do not know what the situation will be in 1973, but roughly in 1972, which started, we think, a significant number of violations, I would say about 96 percent of the total catch was caught in compliance with the regulatory program.

In 1973 we think it is open to question because of what happened in the months of November and December of 1972, and what has already happened this year.

Let me say this. There is roughly about 20 to 30,000 tons of capacity of countries that are not members of the Commission.

Mr. Congressman, if you have 50 percent of this capacity going out there and fish without regulation during the closed season when this fishery should be at rest, so to speak, you will compound the damage.

Mr. ECKHARDT. Even greater?

Mr. FELANDO. Even greater before, and when this man goes out fishing in January and February of 1974, he will be faced with what I think is an intolerable situation, because I do not think that

there is going to be the fish there during the open season for 1974 when it should be, unless you do something now in 1973.

Mr. ECKHARDT. Well, I am certainly impressed by your testimony, and those of the other persons here.

The only thing I was trying to get at is the proposition that the conservation practices have been helpful, and that it would be bad to throw them out the window.

I understand that would be true, but you do feel every effort should be made to require those who are operating illegitimately to comply with the conservation practices.

Mr. FELANDO. That is correct.

Mr. ECKHARDT. Thank you.

Thank you, Mr. Chairman.

Mr. DINGELL. The Chair observes we have a great number of witnesses to be heard.

We want everybody to have a full opportunity to be heard, but the Chairman does feel a great pressure of time, and we are behind schedule.

Mr. ROYAL, it would be most useful for us if you have additional comments, just supply them for the record.

Mr. ROYAL. I was going to comment that Mr. Felando was too gracious.

Mr. ANDERSON. Give him 30 seconds, Mr. Chairman. He will be frustrated if you do not.

Mr. DINGELL. I would rather have him frustrated than the Chair frustrated.

Mr. Studds?

Mr. STUDDS. I am very much in sympathy, Mr. Felando, with your testimony and that of the panel.

I should tell you that those of us from New England, as you well know, have had some experience in an advanced stage of what it means when the Federal Government is truly inactive and not paying much attention to a fishery that is in trouble.

You tell us your catch is at an all time high, and your fleet is modern and efficient. You are in good shape compared to us.

I have a couple of quick questions, if I may.

Mr. Spinello's testimony says some of your vessels in the fleet are proprietary fleets of major food conglomerates.

Can you tell us what percentage falls in that category?

Mr. FELANDO. I can give you the numbers. I would like to provide it to the committee, and I think this would be the best way answering you, rather than give an off-the-cuff figure, and in this way the numbers will be more accurate.

Mr. STUDDS. Obviously, all of your boats are constructed in this country, because of the law of this Nation of some standing.

Do you people favor revision of that law to permit you to build your boats in other countries?

Mr. FELANDO. Right now we think the best tuna vessel built in the world is built in the United States. We do not see any reason to change that law.

Right now we are trying to restrict the number of new vessels entering the fishery, insofar as we think there is a problem of overbuilding.

Mr. STUDDS. You stated in your testimony, Mr. Felando, that you support the position of the United States, the negotiating position, the law of the sea with regard to migratory species.

Mr. FELANDO. Yes.

Mr. STUDDS. Would you have any opinion on the possibility of unilateral action prior to the conclusion of the law of the Sea Conference, for instance the 200 mile limit?

Mr. FELANDO. That is how we got in trouble, by countries taking unilateral action. I think this would destroy the bargaining position of the United States.

Mr. STUDDS. Although you favor the negotiating position, which is designed to attempt to achieve that.

Mr. FELANDO. Yes, the U.S. fisheries position we support.

Mr. STUDDS. You are in somewhat a different position than the New England fisheries, in that your catch has gone up.

We are faced in New England by the fact that by the time that Conference concludes we may not have any fish left, which puts us in a somewhat different situation in view of the time factor involved.

Do you people have any organized relationship with fisheries in the gulf coast and east coast?

Mr. FELANDO. Other than the fact that we participate in advisory committees connected with the Department of Interior, the Department of State, and we have a Fishery Policies Conference, where we get together.

Mr. STUDDS. The members of this committee from the various fisheries areas are trying to get together informally, and later formally.

One of the things that has hurt the American fisherman, whether a tuna fisherman, or trawler from New England, is that he has not had a voice in Washington. He has been fractionated. He has not spoken.

I would hope that we could get together in terms of the interest of the fishing industry as a whole.

I appreciate your testimony, I think it is most impressive.

Mr. FELANDO. Thank you, very much.

Mr. DINGELL. Gentlemen, the committee thanks you very much for your very helpful testimony.

The Chair does observe that there will be full opportunity for additional submissions.

The Chair notes the presence in the room of our former colleague and good friend, Mr. Garmatz.

We are certainly happy to see him back.

The Chair notes our next witness is Mr. Howard Pollock, Deputy Administrator of NOAA.

Mr. Pollock, the Chair notes you are accompanied by Mr. Robert Garske, General Counsel for Construction and Contract, Maritime Administration, and Mr. Jerry Howard, who is one of your Regional Directors.

Mr. Pollock is an old friend of the Chair, and a valued former member of this subcommittee. We are certainly pleased to have him back.

Gentlemen, identify yourself for purposes of the record, and the Chair will receive your testimony.



**STATEMENT OF HOWARD POLLOCK, DEPUTY ADMINISTRATOR, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE; ACCOMPANIED BY ROBERT GARSKE, ESQ., ASSISTANT GENERAL COUNSEL FOR CONSTRUCTION AND CONTRACTS, MARITIME ADMINISTRATION; GERALD HOWARD, REGIONAL DIRECTOR, NMFS, DEPARTMENT OF COMMERCE; AND JAMES BRENNAN, ACTING GENERAL COUNSEL, NOAA**

Mr. POLLOCK. Thank you very much, Mr. Chairman.

I am pleased to be here today to discuss with you our efforts to conserve the yellowfin tuna resource in the eastern tropical Pacific Ocean. As you know, the United States and Costa Rica established the Inter-American Tropical Tuna Commission (IATTC) by an international convention in 1950. Canada, Japan, Mexico, and Panama have since become members of the Convention. In addition, France has applied for membership, and her application has been approved. During the early years, activities under the Convention were devoted primarily to resource assessment and the effect of fishing on the stocks. In 1966, after it became apparent to the member countries that conservation measures were necessary, they were adopted and implemented. The United States has been the principal harvester of the resource. Initially, the other countries party to the Convention were not capable of exceeding even their relatively small special allocations for small vessels of 400 tons or less capacity.

In 1970 and 1971, the situation changed with the introduction by several member countries of large modern tuna seiners. In addition, countries which are not members of the Commission—Spain, France, and The Netherlands—have introduced “superseiners” into the fishery. We are faced with a two-pronged problem at the present time: the need for more effective enforcement within the Commission’s regulatory area and the need to assure that all nations participating in the fishery take steps to follow the conservation recommendations of the Commission. To put this problem in perspective, you should be aware that domestic processors utilize over 90 percent of the yellowfin tuna harvested in the regulatory area and that the U.S. fleet takes approximately 75 percent of the total harvest.

Enforcement of the regulations over the vast area of the eastern tropical Pacific, a region nearly twice the area of the United States, requires the most sophisticated surveillance techniques. Initially, our enforcement had some serious weaknesses due to our inability to monitor the activities of our large seiners. The range of these vessels gives them the capability of fishing within and outside the Commission’s regulatory area on the same fishing voyage thereby making it difficult to determine whether their activities are permissible. This difficulty was resolved in 1969 and 1970 when a system was established whereby the United States required U.S.-flag vessels to report on a regular basis and employed sophisticated electronic equipment to verify their reported positions. The system has proven extremely effective in detecting and deterring violations by U.S. vessels. In the years 1969, 1970, and 1971, 19 violations of



domestic tuna regulations were successfully prosecuted. The efficiency of the detection system was probably responsible for the dramatic drop in the number of violations in 1972 when only one was detected.

Unfortunately, the other member countries of the IATTC do not have the capability of independently establishing a similar electronic system for their large vessels. The key to effective control of the fishery must reside in an international regime for the policing and enforcement of the Commission's conservation recommendations.

In the interim, however, we are taking all steps available to us to assure that, wherever possible, the United States laws are made applicable to foreign-flag vessels controlled by American interests. This is not, of course, the entire solution since many of the foreign-flag vessels operating in the area are not under the direct control of American interests even though they may operate under contractual arrangements to supply our domestic processors.

In the past, Mr. Chairman, as you are probably aware, we have not been able to obtain sufficient evidence to take steps under the embargo provisions of the act. We have detected an increased willingness on the part of the American tuna fleet to cooperate in reporting activities of foreign flag vessels. We believe that this reflects their increased awareness that these conservation measures must be adhered to by all if we are to assure the continued availability of the resource. We hope that the industry's actions will enable us to gather sufficient information to apply the yellowfin embargo provision of the Tuna Conventions Act in cases where such action is appropriate.

We will take all measures available to us to protect this valuable resource.

I do not want to take any longer at the present time, except to, in my case, respond to any questions the committee may have. Mr. Chairman. Gerry Howard, who is with me, will assist in trying to provide accurate answers to the questions that might be propounded.

Mr. DINGELL. Mr. Pollock, the committee thanks you.

The Chair is going to recognize Mr. Everett, counsel of the committee, for questions.

As the Chair has indicated, it is always a pleasure to welcome you back.

Mr. EVERETT. Thank you, Mr. Chairman.

Mr. Pollock, you state on page 3 of your statement that the key to effective control of the fishery must reside in an international regime for the policing and enforcement of the Commission's conservation recommendations.

What steps are being taken to achieve this goal, and do you think that you will be able to do this in the near future?

Mr. POLLOCK. Mr. Everett, our own system for policing and enforcing conservation recommendations is quite effective, and it is based upon a combination of electronic surveillance and reporting with positive Coast Guard aircraft flights.

We are entering now into discussions with other members of the IATTC in an effort to get them to join us in utilizing similar techniques in a cooperative fashion so that ultimately policing and enforcement of the Commission's conservation recommendations

will be uniformly and effectively applied throughout the geographical area covered.

Short of such international agreement I feel that there are some legislative actions which could be considered.

For one thing, I believe the Tuna Conventions Act is inadequate in its enforcement provisions and could be improved. Much of the complicated technology being utilized by foreign superseiners is based on U.S. development, and consequently, most of these vessels employ U.S. personnel. In my view, the act could be amended to cover such U.S. citizens employed on foreign vessels. Currently, the prohibitions of the act apply only to U.S. flag vessels. If the act were amended to apply to U.S. citizens, it could be quite helpful in deterring violations.

Another form of enforcement could be provided by prohibiting the sale or possession by U.S. citizens of fish taken contrary to the Commission's conservation recommendations.

Mr. DINGELL. The Chair, if I may, please, would like to interrupt because I think you have raised two very important points, the first of which is a suggestion you made with regard to amendment of the statute.

The Chair would request you, Mr. Pollock, operating with the assistance of your general counsel, and other staff members, to submit directly to this committee, and not through the Bureau of the Budget, such appropriate suggestions as you might have in the areas that you have just been discussing, and the Chair will request our counsel, Mr. Everett, to be in touch with you on this matter.

You may continue.

[The following was submitted in reference to the above:]

U.S. DEPARTMENT OF COMMERCE,  
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION,  
Rockville, Md., June 6, 1973.

HON. JOHN D. DINGELL,  
*Chairman, Subcommittee on Fisheries  
and Wildlife Conservation,  
House of Representatives,  
Washington, D.C.*

DEAR MR. CHAIRMAN: At the hearings of your subcommittee on May 16, you asked that we submit draft changes to strengthen the enforcement of the Tuna Conventions Act. You specifically directed that the drafts be submitted promptly without prior clearance through OMB. The following changes are submitted as you requested, with the understanding that they do not necessarily represent the position of the Administration and that this Department may not support their enactment.

1. To extend the applicability of the Act to all persons subject to the jurisdiction of the United States, including those aboard foreign flag vessels, and prevent utilization of fish taken contrary to the recommendation of the IATTC adopted by the United States by persons and vessels not subject to the jurisdiction of the United States; section 8(a) of the Act could be reworded as follows (new language underlined):

“(a) It shall be unlawful

(i) for any master or other person in charge of a fishing vessel of the United States or *any person subject to the jurisdiction of the United States on a vessel not registered or otherwise documented under the laws of the United States*, to engage in fishing in violation of any regulation adopted pursuant to section 6(c) of this Act; or

(ii) for any person to ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession or control any fish which he

knows, or should know, have been taken or retained in violation of such regulations; or

(iii) for any person subject to the jurisdiction of the United States to ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession or control any fish which he knows, or should know, have been taken or retained contrary to the recommendations of the Commission made pursuant to paragraph 5 of Article II of the Convention for the Establishment of an Inter-American Tropical Tuna Commission and adopted as regulations pursuant to section 6(c) of this Act, without regard to the citizenship of the person or vessel which took the fish."

2. To assure that fish entering the United States and caught by foreign flag vessels is caught in compliance with the recommendations of the Commission, section 6(c) of the Act could be amended by inserting in the sixth sentence the following clause prior to the words "and such other measures incidental thereto as the Secretary . . .":

"the requirement of proof satisfactory to the Secretary of Commerce showing that any fish subject to regulation pursuant to a recommendation of the Commission offered for entry into the United States has not been taken or retained contrary to the recommendations of the Commission made pursuant to paragraph 5 of Article II of the Convention for the Establishment of an Inter-American Tropical Tuna Commission which have been adopted as regulations pursuant to this section;"

3. To assure that fishing vessels constructed in the United States and operated under foreign flag will be employed in a manner consistent with the provisions of the Act, the following new section 13 could be added to the Act:

"(13) In granting approval under 9 or 37 of the Shipping Act of 1916, as amended, involving vessels intended as or designed for use as fishing vessels, the Secretary of Commerce shall take into account the effect of such approval upon the living marine resources of importance to the United States. As a condition to granting approval for a transaction which would result in foreign registry of a fishing vessel constructed in the United States, the Secretary may enter into an appropriate agreement with the person exercising effective control over the use of the vessel to guarantee that the vessel shall be operated in conformity with any laws and regulations of the United States governing the conservation of living marine resources. Such agreements may provide for a penalty where the Secretary of Commerce determines that a fishing vessel is operated in a manner which would constitute a violation of Federal law or regulation pertaining to the conservation of living marine resources, were the vessel registered or otherwise documented under the laws of the United States: *Provided*, that the assessment of penalty may be made only after an opportunity for hearing, as provided in 5 U.S.C. 554; and *Provided*, further, that the amount of any penalty assessed shall not exceed the monetary value of any penalties which may be imposed upon persons or vessels subject to the jurisdiction of the United States for violation of applicable U.S. law or regulation in similar cases. In the event of failure to pay the penalty assessed by the Secretary of Commerce under such agreements, he may request the Attorney General to institute a civil action in a district court of the United States for any district in which the person who entered into the agreement is found, resides or transacts business to collect the penalty assessed by the Secretary as provided herein and such court shall have jurisdiction to hear and decide any action. The Secretary of Commerce may require a bond in an amount determined by him as sufficient to assure payment of any penalties which may be assessed by him."

The foregoing changes suggest that the definition of "person" in section 2(d) be deleted.

Sincerely,

JAMES W. BRENNAN,  
Acting General Counsel.

Mr. POLLOCK. I was simply going to add that if civil penalties were authorized in connection with these prohibitions, adherence to the Commission's recommendations would be much more readily attained.



I think the steps are reasonable in view of the fact that the yellowfin tuna taken from the IATTC regulatory area are processed almost exclusively by U.S. processors, so we would really get to the meat of the problem.

Mr. EVERETT. If you will, too, Mr. Pollock, supply an amendment or appropriate language to accomplish the purpose you indicated.

You indicated, the Tuna Convention Act was too weak.

What has the Department done with respect to the options it has under present laws to get at this problem?

Mr. DINGELL. Mr. Pollock, the Chair is reading now so that we have it all before us, Public Law 87-814, which reads as follows, in part:

The Secretary of Interior shall suspend at any time the application of any such regulation when, after consultation with the Secretary of State and the United States Commissioners, he determines that foreign fishing operations in the regulatory area are such as to constitute a serious threat to the achievement of the objectives of the Commission's recommendations.

That language permits the Secretary of the Interior, who is the predecessor agency to NOAA, as you know, to suspend the function, to suspend regulations where they adversely affect American fishermen, but are not adversely affecting other nations' fishing.

Then there is an additional section which reads:

That upon the promulgation of any such regulations the Secretary of the Interior shall promulgate additional regulations, with the concurrence of the Secretary of State, which shall become effective simultaneously with the application of the regulations hereinbefore referred to (1) to prohibit the entry into the United States, from any country when the vessels of such country are being used in the conduct of fishing operations in the regulatory area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission, of fish in any form of those species which are subject to regulations pursuant to a recommendation of the Commission and which were taken from the regulatory area; and (2) to prohibit entry into the United States, from any country, of fish in any form of those species which are subject to regulation pursuant to a recommendation of the Commission and which were taken from the regulatory area by vessels other than those of such country in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission. In the case of repeated and flagrant fishing operations in the regulatory area by the vessels of any country which seriously threaten the achievement of the objectives of the Commission's recommendations, the Secretary of the Interior, with the concurrence of the Secretary of State, may, in his discretion, also prohibit the entry from such country of such other species of tuna, in any form, as may be under investigation by the Commission and which were taken in the regulatory area. The aforesaid prohibitions shall continue until the Secretary of the Interior is satisfied that the condition warranting the prohibition no longer exists, except that all fish in any form of the species under regulation which were previously prohibited from entry shall continue to be prohibited from entry. (Sept. 7, 1950, ch. 907, sec. 6, 64 Stat. 778; Oct. 15, 1962, Pub. L. 87-814, sec. 2, 76 Stat. 923).

Now, what has been the action of your Agency regarding those two very important provisions of law?

Mr. POLLOCK. Well, Mr. Chairman, first I think we ought to make it clear that in order for us to utilize these provisions we have to have some proof, and this is part of the problem I was alluding to earlier.



Mr. Chairman, it is a matter of effective enforcement; we need the opportunity to clearly establish that there are violations. When the vessels go out a great distance and fish both inside and outside the protected areas on the same fishing voyage, we have a limited opportunity to establish violations.

What we do, then, is to take the most effective action possible—as we attempted to do just recently with the *Atlantis* and the *Mariner*, two vessels which are under the Dutch Antilles flag. This was mentioned by earlier witnesses. We have a system of electronic triangulation which we use, with the Navy and with the Coast Guard, on our own vessels so that we can pretty well pinpoint where they are operating at any given time.

We are trying to get the other member countries of the IATTC to cooperate with use in this system so that their large vessels will be subject to a similar electronics system.

When we do get information concerning violations, and the information is subsequently verified, then we certainly can take action under the act to place the embargoes into effect.

Mr. EVERETT. Mr. Pollock, you mentioned several violations the tuna boat association reported to you.

Has your Agency investigated each one of those violations over a period of 5 or 6 years in the past?

Mr. POLLOCK. May I have Gerry Howard answer? I think he was with the predecessor organization when some of those incidents occurred.

Mr. HOWARD. My name is Gerald Howard, the Regional Director of the National Marine Fisheries Service, Southwest Region, with headquarters in Terminal Island, Calif.

The problem in this area, Mr. Chairman, is that because of the way the act and the regulations are written, there are certain procedures we must follow. I am not in a position to give them to you in detail now, but I do wish to explain that it is necessary to have probative evidence indicating that these foreign vessels are in violation before you can actually put these measures into effect.

The major difficulty is that these vessels fish in an extensive area. While they may be seen fishing in a particular spot at a particular time, which appears to be in violation and may very well be in violation, it is necessary to determine subsequently what the vessel unloaded in order to confirm the violation.

My experience with our own fleet suggests to me that many vessels are at times in violation, but there is difficulty in proving this to the satisfaction of the act and the terms of the regulations.

Mr. EVERETT. Mr. Howard, are the terms of the act too restrictive or are the terms of the regulations too restrictive?

Mr. HOWARD. I am not an attorney, but I would guess it is a combination of both.

Mr. EVERETT. Is there anything in the act that says you have to be convinced conclusively that the evidence is supportable?

Mr. HOWARD. I suppose that if the regulations were written with a little more flexibility, there would not be such great difficulty in obtaining sufficient evidence.

Mr. BRENNAN. I am James Brennan, Acting General Counsel.

The act provides for consultation with the Department of State on an embargo on the fishery products of the offending nation. This is a step that we feel should not be taken lightly, since it is directed not toward a specific shipment, but against all yellowfin products of an entire nation coming into this country. Therefore, our regulations are written in such a way that we would consult with the Department of State and with the nation concerned before putting an embargo into effect.

I think that for the first time we have some indications that there probably are violations. Whether or not they affect the efficacy of the Convention is another thing.

I think we have taken steps in the case of one recent incident to assure that the vessels involved will comply with the regulations, in the future, despite the fact that they are flying a foreign flag.

Mr. EVERETT. Have you ever made a determination that a country has been in violation of this act?

Mr. POLLOCK. The country itself would not be in violation of the act. The country might well be a non-member country. Rather, it would be fishing activities that would impair the effectiveness of the conservation program of the IATTC.

Mr. EVERETT. Does this act give you permission to also reach non-signatory nations to the agreement who violate the agreement, just as much so as those who are signatories to it?

Mr. POLLOCK. Only insofar as the embargo provisions go. We cannot control their activities on the high seas.

Mr. EVERETT. But if a non-member nation violates the regulations of the Convention, you could prohibit the import?

Mr. POLLOCK. Yes.

Mr. DINGELL. You also have the act which related principally to the North Atlantic salmon, but would also cover any and all fisheries in the violating country?

Mr. POLLOCK. That is correct.

Mr. DINGELL. Have the provisions in the Pelly Act ever been invoked?

Mr. POLLOCK. The Pelly amendment, as I recall, is a little more difficult to apply, because it requires a Presidential proclamation. Consequently, I think that the embargo provisions in the Tuna Conventions Act are probably easier to apply than those of the Pelly amendment.

Mr. EVERETT. The Pelly Act also puts the onus upon the Secretary of Commerce to make the first determination before the President gets into the picture.

Mr. POLLOCK. That is correct.

Mr. EVERETT. Let us take the *Atlantis* for example.

You received a report from the Tuna Boat Association, from these people who testified today, the affidavits that they presented to you, that the *Atlantis* had been in violation of the Tuna Convention regulations.

Will you tell us what steps you have taken with respect to investigating this violation?

Mr. POLLOCK. Well, Mr. Chairman, when this was brought to our attention we immediately contacted Marad to find out whether or not the Westgate Co. had permission to allow these vessels which they were building to depart from the United States for a foreign registry. The two vessels were the *Mariner* and the *Atlantis*, with the latter harvesting over the 15 percent limit allowed on yellowfin tuna contrary to the recommendations of the Commission. So far as we could tell they were going into Puntarenas, Costa Rica, with their catch.

We contacted the Costa Rican government, as one act, and we also found that the *Mariner* had not received permission from the Maritime Administration of the U.S. Government to leave San Diego when it was ready. Therefore, we requested the Customs Service to prevent its departure.

This immediately involved Mr. Edwin F. Lewis, president of the Westgate California Foods, Inc. who I believe is in the room, and is a witness later. We met with him and told him that we were concerned about the conservation aspects of the IATTC, and that we were not going to tolerate any American-owned company violating the spirit and the provisions of this act. He will, I am sure, have some comment to make to this committee on his own behalf afterwards.

The net result of it was that we got an agreement from them to completely comply with the provisions just as any American-flag vessel would. We worked out a contract with them. That is the contract that my friend Johnnie Royal said he thought was too weak.

We would be happy, Mr. Chairman, to provide a copy of the contract to the committee.

Mr. DINGELL. I think that would be quite appropriate, if you will make it available, and we will insert it in the record at this point.

[The contract referred to follows:]

#### AN AGREEMENT TO COMPLY WITH THE CONSERVATION LAWS OF THE UNITED STATES

This Agreement made and entered into at Washington, D.C. this 10th day of May, 1973, between the National Oceanic and Atmospheric Administration and Westgate Sea Products, Inc., a Puerto Rican corporation, (Westgate) witnesseth:

Whereas Westgate, through subsidiary corporations Motorvessel *Atlantis* N.V., a Netherlands Antilles corporation, and *Marine Resources*, N.V., a Netherlands Antilles corporation, owns the tuna seiner vessels M/V ATLANTIS and M/V MARINER, respectively; and

Whereas Westgate, as managing director of the Motorvessel *Atlantis* N.V. and *Marine Resources* N.V., can act for and on behalf of said corporations; and

Whereas Westgate has documented the M/V *Atlantis* under said corporation flying the Netherlands Antilles flag and does desire to document the M/V *Mariner* under Netherlands Antilles flag; and

Whereas the transfer of the vessel *Mariner* requires the approval of the Secretary of Commerce acting through the Maritime Administrator; and

Whereas, in determining whether to grant such approval, the Maritime Administrator has requested the advice and concurrence of the National Oceanic and Atmospheric Administration; and

Whereas the National Oceanic and Atmospheric Administration wishes to assure that the said vessels will be operated in compliance with the laws of the United States relating to conservation of living marine resources and



any international agreements relating to such resources to which the United States is a party;

Now, therefore, in consideration of the premises and promises hereinafter contained, the parties agree as follows:

Westgate, acting for and on behalf of Motorvessel *Atlantis N.V.* and MARINE RESOURCES N.V. (owners), hereby guarantees that the above-mentioned vessels, so long as they are owned and continue to operate directly or indirectly for the owners or subsidiaries or related companies of Westgate, shall be operated in compliance with the laws and regulations of the United States governing the conservation of living marine resources.

If, after an opportunity for a hearing as provided in 5 U.S.C. 554, the Secretary of Commerce determines that the vessels have been operated in a manner which would be a violation of U.S. law or regulation pertaining to the conservation of living marine resources if the vessel were documented under the laws of the United States, he may assess a penalty not to exceed the value of the catch. In assessing the amount to be paid, the Secretary shall be guided by administrative and judicial precedent in like cases.

Prior to further sale, charter, or transfer, except by mortgage, Westgate will request approval from the Maritime Administration. The application for approval will be considered as if made by a citizen of the United States as defined in section 2 of the Shipping Act of 1916, as amended, for the transfer of a vessel documented under the laws of the United States.

The National Oceanic and Atmospheric Administration agrees to withdraw the objection which it has lodged with the Maritime Administration to the transfer of the vessel *MARINER* and agrees to advise the Maritime Administration that from the viewpoint of the National Oceanic and Atmospheric Administration there is no objection to the proposed transfer.

In witness whereof the parties hereto have executed this agreement on the date hereinabove stated.

EDWIN F. LEWIS,

*President, Westgate Sea Products, Inc.*

ROBERT M. WHITE,

*Administrator, National Oceanic and Atmospheric Administration.*

Mr. POLLOCK. I would also like to state that we are pleased to advise the committee that Westgate appears to be honoring the agreement that we entered into with them regarding the *Mariner* and the *Atlantis*. They have informed us that the *Mariner* is underway to Panama to pick up her net, and will subsequently be departing for the fishing grounds in the Pacific. The corporation will require the *Mariner* to supply daily radio reports in the same manner as U.S. vessels. We understand the *Atlantis* is about to leave for Puntarenas, Costa Rica for minor repairs and fuel. We have been assured, however, that the *Atlantis* will report to us before departing on its next fishing voyage.

Mr. Chairman, I would like to say that we are pleased with the cooperative attitude displayed by Westgate in this matter. We hope that the method employed here will serve as a model for solving similar problems as they arise.

Nevertheless, I want to point out that if we had the kind of amendments in the act that I talked about earlier, which would assist us with respect to American citizens on foreign vessels, I think we could operate much more effectively.

Mr. DINGELL. Well, you are going to submit that to us, Mr. Pollock?

Mr. POLLOCK. We will do that.

Mr. DINGELL. Your arrangements with Westgate, were they on the basis of amity or good fellowship, or on the basis of some statutory authority vested in your Agency and/or the Federal Government?



MR. BRENNAN. Mr. Chairman, part of the situation was, of course, that they were unable to depart with the vessel *Mariner* without the permission of the Maritime Administration. Consequently, they were in a position of being precluded from taking the actions they had planned for the vessel with respect to its operation. Using Marad's authority we were able to negotiate an agreement. However, I think that it is very difficult to say what the motives of the parties were.

MR. DINGELL. The question very simply is do you have statutory authority to enforce requirement on American nationals that they meet the same test operating a foreign-flag vessel as they do in operating an American-flag vessel?

I think the answer is "No."

MR. BRENNAN. We do not have the authority to force them to do it.

MR. DINGELL. The next question is, the Chair again requests that you gentlemen submit to us appropriate language, not filtered through the kind hands of the Office of Management and Budget, but directly to this subcommittee, so that we may have that available to us when we consider further this matter.

Mr. Sharood had a question.

MR. SHAROOD. Thank you, Mr. Chairman.

In this same regard, does not the 1916 Shipping Act give the Maritime Administration the authority to require approval for the sale foreign of a ship built in the United States?

We just had a discussion of this late last year in regard to a proposed amendment to the act introduced by Congressman Downing.

There was an allegation of delay on the part of the Maritime Administration in approval of the transfer foreign of drilling rigs, for example, being built in the United States.

It was my impression that there is a general statutory requirement, under national defense considerations basically, for approval of any documentation abroad of a ship or vessel built in the United States.

MR. POLLOCK. I think it might be appropriate to have Mr. Garske, who is the Assistant General Counsel for MARAD, respond to that.

MR. GARSKE. The Maritime Administration, under delegated authority of the Secretary of Commerce, is given the power to approve transfers to foreign registry and ownership of vessels, documented or undocumented.

That approval must be obtained prior to the transfer to foreign registry or ownership.

As you indicated, that has been primarily used with respect to national defense and national security interests.

In exercising this authority, the Maritime Administration obtains the advice and recommendations of the Department of Defense, NOAA, Coast Guard, the Bureau of International Commerce, and the Department of State, depending upon the kind of vessel involved, and the circumstances.

However, as I indicated basically this has been at least in terms of its past history a national defense, national security type of thing.

MR. SHAROOD. Nevertheless, there is a statutory provision requiring approval for any foreign documentation.

MR. GARSKE. That is correct.

Mr. SHAROOD. So it is not simply a matter of they being good guys. You could have stopped them from documenting foreign.

Mr. GARSKE. The only question is from the point of view of the Maritime Administration, since here we are dealing with a statute which you probably are aware is a very broad statute.

There is very little in the way of criteria, in the way of legislative history, going back to World War I. Since we are dealing with private property here, the Maritime Administration has to have a good reason based upon national security or national defense, and if in a given case, say the consulting agencies, along with Maritime, find the basis, then Maritime Administration would deny approval.

Mr. SHAROOD. There is nothing in the statute that denies you the right to base a denial on conservation considerations, is there?

Mr. GARSKE. Well, there is nothing expressly that prohibits that.

Mr. SHAROOD. I just wanted to clarify that.

In the same general vein, in regard to Mr. Pollock's statement, you seem to place some stress, Mr. Pollock, on the fact that as you have said, "we have detected increased willingness on the part of the American tuna fleet to cooperate in reporting activities of foreign-flag vessels."

What is the relevance of that statement? According to the gentleman with you that type of reporting is really of no value.

We have had evidence here from the captain of one ship and his wife, they saw a ship fishing in violation of the Convention.

You are saying that we hope that this agreement with the owner of that ship will be a model for others.

Obviously, there is a diametrically opposed point of view apparently in regard to the first ship in question; namely, the *Atlantis*. They say it has been fishing, seen by them, in violation.

You all seem to feel that this is a model agreement, and everybody is living up to the letter and the spirit of that agreement.

Who are we to believe, Mr. Pollock?

Mr. POLLOCK. I think that we must put this in perspective. The violation that was observed was what was reported to us. It was documented by verified statements made by members of the fishing industry, and as a result of this, we took the action that we did, so it did not happen afterwards.

Mr. SHAROOD. What action did you take?

Mr. POLLOCK. We denied one vessel, the *Mariner*, the opportunity to depart from the shipyard in San Diego, and got the Westgate people in and told them that they were going to have to comply with the provisions of the regulations of the IATTC, that they were going to have to operate the same as any American-flag vessel. They signed an agreement, and so far as we know, they have been keeping to it.

I do not think we should put these events in reverse order.

Mr. SHAROOD. Just one last point, if I might, Mr. Chairman.

Mr. Brennan does not seem to think that the Pelly amendment to the Fishermen's Protective Act is of any particular value, is that correct, as opposed to the embargo provisions of the Tuna Act?

Mr. BRENNAN. No, sir, I do not mean it is of no particular value. It is something that cannot be applied to a specific violator, a specific situation.

Mr. SHAROOD. Why not?

Mr. BRENNAN. Because it is applied to the nation of origin. It is an embargo against all the products.

Mr. DINGELL. No, it is not. It is all fishery products.

Mr. POLLOCK. But of the nation, not of the particular violator and that is the problem he was talking about. He did not mean we would not use it, because we certainly would if appropriate.

Mr. SHAROOD. In followup on that, if it becomes obvious that the Netherlands Antilles, part of the Netherlands is being used with the obvious knowledge of the Netherlands Government as a flag of convenience to circumvent our regulations, it would seem appropriate that the Pelly amendment to the Fisheries Protective Act is being violated.

Mr. POTTER. Would you take a look at that statute? I do not read it the way you do. The statute we are talking about is section 6, and I am specifically interested in that section of the statute, which says the Secretary will have the authority with the concurrence of the Secretary of State——

Mr. POLLOCK. May I interpose? I think you are confusing the Pelly amendment with the 1950 Tuna Conventions Act.

Mr. POTTER. Let me be quite precise. I read this law as giving you the authority to prohibit right now any catch taken by the *Atlantis* at the time they were viewed as fishing illegally as you already have stated, by the fishermen involved.

I read the statute as being sufficiently precise to let you bar just those fish caught by that boat at the time it was fishing illegally.

Mr. POLLOCK. He was talking about the Pelly amendment. He was not referring to the Tuna Conventions Act.

Mr. POTTER. Let us talk about the act I am talking about now.

Mr. DINGELL. That is the Pelly Act.

Mr. POLLOCK. No, that is the point.

Mr. POTTER. This is the Tuna Act. Do you or do you not have the authority to stop the fish from coming into the country?

Mr. BRENNAN. I would like to point out this Act has been implemented by regulations promulgated by the administration back in 1966, and the thrust of these regulations is that there will be a determination that will be applied, as I read it, to tuna imports from a foreign country, a specific foreign country.

Now, there are other provisions that permit the product coming from that country to be imported if accompanied by a certificate indicating compliance.

Now, I would like to point out one thing, Mr. Potter. In section 281.6 of our regulations it says: "Provided, that entry shall not be denied and no proof shall be required for any such shipment which, on the date of such publication," and that is the publication of the notice, "was in transit to the United States on board a vessel operating as a common carrier."

When we published these regulations, after public notice and public hearings in this case, we were clearly contemplating something that would be applied for some period of time, and not an individual enforcement tool against each specific violation.



Mr. POTTER. What I interpret you are telling me then is that the law is sufficiently broad to allow the prohibition of a specific cargo, but your regulations are not, is that right?

Mr. BRENNAN. No, I think that a reasonable interpretation of the law goes to the country.

Mr. POTTER. No, sir, I just disagree with you categorically.

The language of the statute which I am reading from says to prohibit entry of fish taken from the regulatory area by vessels other than those permitted by the convention.

How can you read it any other way?

Mr. BRENNAN. If you would read that whole section you will find that it is a two-pronged section, as I recall.

Mr. POTTER. One refers to fish taken by vessels of another country, and one refers to fish landed in that country by vessels from some place else.

Mr. BRENNAN. Give me a moment to look at the language.

Well, as I read it, it says that the Secretary shall promulgate regulations to prohibit entry into the United States of fish products from any country when the vessel of such country, et cetera.

It seems to me that it applies to the country, because the following provision deals with the certification.

Mr. Potter. No, sir, read No. 2, to prohibit from any country of fish, et cetera.

Mr. BRENNAN. OK., but then it goes on to say, "taken from the regulatory area by vessels other than those of such country."

That is clearly going to the transshipment situation.

Mr. POTTER. That is right, and these fish, as I understand, and as your witnesses testified were, in fact, in Costa Rica, and taken by vessels registered in the Antilles.

Mr. BRENNAN. Maybe I do not understand.

I agree that it is possible to apply this to Costa Rica, as well as to The Netherlands Antilles.

Mr. POTTER. I am saying it is possible to apply to the fish that are now in Costa Rica that may be enroute to the United States if, in fact, they are.

Mr. BRENNAN. I must disagree.

Mr. POTTER. There is no point in getting into this kind of detail at these hearings.

Perhaps you will supply us with an analysis of the statute as justifying your position on that.

Mr. BRENNAN. I would be happy to.

[The information referred to follows.]

U.S. DEPARTMENT OF COMMERCE,  
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION,  
Rockville, Md., May 24, 1973

FRANK M. POTTER, JR., Esq.,  
Counsel, Merchant Marine and Fisheries Committee, Longworth House Office  
Building, House of Representatives, Washington, D.C.

DEAR MR. POTTER: At the hearings of the Subcommittee on Fisheries and Wildlife Conservation and the Environment of the House Merchant Marine and Fisheries Committee held on May 16, you asked whether the embargo provisions contained in the Tuna Conventions Act of 1950, as amended (16 U.S.C.



951-961), were meant to apply to individual vessels or to countries. As you know, our regulations implementing the Act apply only to countries.

As originally enacted in 1950, the Tuna Conventions Act was viewed as a conservation and not a regulatory measure. As a result, the embargo provisions currently in the Act were lacking. These were added pursuant to Public Law 87-814 in 1962.

The legislative history of Public Law 87-814 suggests that the embargo provisions are to apply to countries. House Report No. 2409 on the Act states:

"This section also contains an important provision that is intended to encourage effective cooperation with the conservation program by *countries* which are not parties to the Tropical Tuna Convention and which, therefore, have no treaty obligation to observe tuna conservation requirements for the convention area. Upon the promulgation of tuna conservation regulations by the Secretary of the Interior he would be required also, if the Secretary of State concurs, to promulgate additional regulations to prohibit entry into the United States of tuna in any form of species under regulation, and taken in the regulatory area, from any *country whose vessels* are fishing in a manner as would tend to diminish the effectiveness of the conservation program for such species. Moreover, said prohibitory regulations would apply also to tuna in any form of species under regulation, and taken in the regulatory area, which such *country* would transship to the United States via the ports of third countries, thus preventing circumvention of the embargo through the device of transshipment. In addition to the foregoing controls, this section would also authorize the Secretary of the Interior, if the Secretary of State concurs, to cause the prohibition against entry to apply also to other species of tuna being studied (but not regulated) by the commission in instances where there are repeated and flagrant fishing operations by the *vessels of another country* seriously threatening the success of the conservation program." (House Report as reprinted in 1962 U.S. Code Congressional and Administrative News, p. 3196. Emphasis added.)

Based on this legislative history, I have concluded that it was clearly the intention of Congress that the embargo provisions were to be applied against countries and not against individual vessels.

Sincerely,

JAMES W. BRENNAN,  
Acting General Counsel.

Mr. POTTER. And may I ask you just a few more questions?

Did you, Mr. Pollock, or did MARAD actually clear to the Export-Import Bank in February a proposal for a financial commitment from the bank covering the *Atlantis*?

Mr. POLLOCK. I will have to defer to Marad.

We can supply the information for the record, if you wish.

At this moment I do not have an answer.

Mr. POTTER. You were not aware of any such answer that was provided?

Mr. GARSKE. No, sir.

Mr. BRENNAN. I understand there have been from time to time some informal contacts between the people in NOAA and the people in the Export-Import Bank, in which they discuss our policies and the conservation arrangements which might have an impact on transfers.

There was no specific clearance on each vessel, including the vessel *Mariner*.

Mr. POTTER. It was done on the telephone?

Mr. BRENNAN. Done on the telephone, I believe, yes, sir.

Mr. POTTER. Let me ask you a few questions about what you call a contract.

Mr. DINGELL. Before you do, would you inform me whether or not, in your view, it is necessary to have some kind of liaison between

Export-Import Bank and you folks at NOAA, and you folks over at Maritime?

It appears to me it was not very much coordination, because this situation almost got out of hand insofar as making a loan, yet one vessel was out fishing. We grabbed the second vessel and prevented it from leaving port.

You might conceivably have no way whatsoever under your regulation to grab the second vessel.

Mr. BRENNAN. Maybe I should put this in perspective.

Mr. DINGELL. I have it in perspective.

Does it not occur to you that you better get some better coordination between NOAA, Maritime and the Export-Import Bank on matters of this sort?

Mr. BRENNAN. Insofar as NOAA and Marad are concerned, we did clear the *Atlantis*.

Mr. DINGELL. The first vessel?

Mr. BRENNAN. Yes, sir.

Mr. DINGELL. Apparently you did not do a very good job, because they were out fishing on the high seas in violation of the Convention.

Was this, in your contemplation, that they would be out on the high seas violating the Convention?

Mr. BRENNAN. No, sir.

Mr. DINGELL. Does it not occur to you we better get some better clearance procedures with regard to NOAA, Marad, and the Export Import Bank?

Mr. BRENNAN. Yes, sir, I understand that all of our communications can be improved.

Mr. DINGELL. I am asking do you not think that you had better?

Mr. BRENNAN. Yes, sir

Mr. DINGELL. The next question is going to be what should be done.

I am going to ask you to submit to me a statement as to what should be done.

[The information follows:]

#### EXPORT-IMPORT BANK REQUEST OF NOAA VIEWS IN BUILDING NINE TUNA VESSELS

The Export-Import Bank has contacted NOAA formally requesting its views on a proposed arrangement whereby nine tuna vessels would be built in an American yard for operation by a Mexican Government-owned corporation. We have responded to the Export-Import Bank, setting forth our views on the above transaction. In addition, we have requested that the Export-Import Bank continue to utilize the procedures followed in that case in all future arrangements with fishing vessels. We anticipate that this will solve any coordination problems which many have existed in the past. With respect to coordination between NOAA and MARAD, we have followed a procedure whereby formal claims are required by NOAA on all proposed transfers. We believe that the mechanism for coordination with MARAD is sufficient in this case. Enclosed is a copy of the latest coordination document, Form MA-FL-117, applicable to the vessel KING OSCAR.

FORM MA-FL-117  
(10-67)U.S. DEPARTMENT OF COMMERCE  
MARITIME ADMINISTRATION  
WASHINGTON, D.C. 20235

DATE \_\_\_\_\_

FILE NO. \_\_\_\_\_

TO:

The following application has been received for the approval required by Sections 9 and 37 of the Shipping Act 1916, as amended, of the transfer to foreign ownership and/or registry of the following vessel(s):

|                                                               |            |                                                                                                                |                      |      |
|---------------------------------------------------------------|------------|----------------------------------------------------------------------------------------------------------------|----------------------|------|
| NAME OF VESSEL                                                | TYPE       | OFFICIAL NO.                                                                                                   | WHEN AND WHERE BUILT |      |
| D.W.T.                                                        | GROSS TONS | LENGTH                                                                                                         | SPEED                | N.P. |
| APPLICANT/OWNER-NAME                                          |            | ADDRESS                                                                                                        |                      |      |
| PURCHASER - A CORPORATION                                     |            | - AN INDIVIDUAL                                                                                                |                      |      |
| NAME                                                          |            | NAME                                                                                                           |                      |      |
| ADDRESS                                                       |            | ADDRESS                                                                                                        |                      |      |
| NATIONALITY                                                   |            | NATIONALITY                                                                                                    |                      |      |
| DATE AND WHERE INCORPORATED                                   |            | COUNTRY OF REGISTRY                                                                                            |                      |      |
| NAMES AND NATIONALITY OF OFFICERS, DIRECTORS AND STOCKHOLDERS |            | PROPOSED USE OF VESSEL                                                                                         |                      |      |
|                                                               |            | REMARKS                                                                                                        |                      |      |
|                                                               |            | <p>Office of Ship Operations</p> <p>By _____</p> <p>Virginia J. O'Brien, Chief<br/>Foreign Transfer Branch</p> |                      |      |
| RETURN ORIGINAL COPY TO THIS OFFICE AFTER CLEARANCE           |            |                                                                                                                |                      |      |
| REPLY                                                         |            |                                                                                                                |                      |      |
| SIGNATURE                                                     |            | TITLE                                                                                                          |                      | DATE |

USCOMM-OC 42318-P67

FORM MA-FL-117 (10-67)

Mr. POLLOCK. I think that for the record we should point out that we have had informal contacts with the Export-Import Bank, discussing our general policies with regard to the transfer of tuna vessels to a foreign flag. In reaching its decisions regarding credit terms and discount loans, we understand that the Export-Import Bank takes into account policies of the U.S. Government relating to conservation.

Mr. DINGELL. That, Mr. Pollock, is our hope.

However, I must confess to you it does not appear to have been taken into consideration here.

Mr. POLLOCK. But this is an after-the-fact situation. At the time the Export Import loans are made, the vessels, of course, do not exist. It certainly can be a policy of the Export-Import Bank, in their wisdoms, to get certification or a statement from any company they lend money to that they will not use that money in violation of the law.

Mr. DINGELL. Now, that is precisely the point. I think we need that, and need some sanctions as a part of the loan. Also, I think we need some other tools to tighten this thing up, and that is one of the reasons we are sitting here this afternoon on this bright sunny day, to find out what we can do to enable you to do the job better.

It is my considered view that there has not been adequate coordination.

Fortunately, you lucked out by being able to grab the second vessel. Had you not done that, these folks could have thumbed their nose at you.

We are about to get around to finding out what the next step is in obtaining better coordination. That is yet to come.

The point of this particular minute is I get the distinct impression that your regulations nor your coordination are sufficient as of this particular minute.

I will recognize you to tell me I am all wrong.

Mr. POLLOCK. No, sir; you are not all wrong, but the first violation of the *Atlantis* occurred in April of this year, and obviously, any loans from the Export-Import Bank would have to have been made several years ago, before the construction on the vessel was commenced.

Mr. DINGELL. That is precisely the point.

Counsel informs me that the discount loan of that vessel, the *Atlantis*, was approved on February 5, so it was not several years ago. That is a matter of about 60 days previous to the violation.

Mr. POLLOCK. Yes, sir; previous to the violation, and there was not any kind of violation at the time the loan was made.

Mr. DINGELL. That is right, but there were no clear provisions in the loan that would have prevented it, nor were there any, as I ascertain it, at the time the loan was made, nor were there appropriate clearance procedures between Export-Import Bank and NOAA and Maritime, to assure that violations did not transpire.

Mr. POLLOCK. Mr. Chairman, it is my understanding that in our informal contacts with Export-Import Bank of the United States, the several applications for insurance or discounted loans were de-



nied, and we believe that in at least some of these cases, the reason for the denial may have been based at least in part upon the effect of foreign flag operations from a conservation viewpoint.

Mr. DINGELL. Mr. Pollock, I do not take this on faith. I happened to have had members of my staff there yesterday to look at Export-Import Bank files, and they were not permitted to look at files, and we asked to look at precisely the files to prove or disprove the point you are raising now.

Now, that is your statement as you understand it. You did not make the bold statement that that fact be so.

Mr. POLLOCK. I cannot make that statement, because I am not personally knowledgeable about this matter.

Mr. DINGELL. We intend to address this question to our good friends from the Export-Import Bank, in order that they might comfort us on this very important point.

Mr. POLLOCK. Fine.

Mr. DINGELL. Mr. Potter?

Mr. POTTER. I would like to ask just a few questions about this contract that you have with Westgate.

My understanding is that there is a third vessel on the way, for which there will be an attempt made to have that vessel go under a foreign flag, and it is the *Sea Thresher*.

Our information may or may not be correct. We will find out shortly.

You would have, it would seem to me, an additional sanction. My concern, Mr. Pollock, is that the penalty provisions of this agreement is weak, and unenforceable. I sympathize with the statement of Mr. Royal, who said it was as if you rob a bank and get caught, all you have to do is give it back to the bank.

If in fact you catch either of these vessels violating a law or regulation pertaining to the conservation of living marine resources, and assume that includes the Marine Mammal Act, you can assess a value not to exceed the value of the catch.

Do you mean the value of the catch at the time you land on him and find he is doing something illegal, or are you satisfied with that penalty?

Mr. POLLOCK. I assume it means the value of the total catch on that trip.

Mr. POTTER. Caught then, or caught afterward?

Mr. POLLOCK. I perhaps should again let the general counsel respond.

Mr. BRENNAN. No, Mr. Potter, it means the catch, the landed catch of the vessel.

Now, I think you should realize that yellowfin tuna sells for approximately \$500 a ton, and a full load on a 1,500 tonner is \$750,000. This is not a nominal penalty, as was suggested. It far exceeds the statutory, mandatory penalty set forth in the act, which goes up to \$100,000.

In fact, Mr. Potter, in the 19 or 20 violations we have had in the past 3 years, we have in each case seized and effected the forfeiture of the catch, minus the share of the crew and expenses of the voyage,

It is a very effective remedy when you are talking about the catch of a tuna vessel.

Mr. POTTER. Well, the representatives of the tuna industry did not seem to think it was so effective.

Mr. BRENNAN. This is what we have applied against them, and their violations have dropped from 19 in the 2 years preceding 1972 to one in 1972. It is a very effective penalty.

Mr. DINGELL. The Chair observes Mr. Sharood.

Mr. SHAROOD. Thank you, Mr. Chairman.

What is meant by the following sentence then in assessing the amount to be paid, the Secretary shall be guided by the judicial precedents in like cases.

Does that mean that if there is a practice of imposing a \$100,000 maximum that is going to be observed?

Mr. BRENNAN. No; I think what is in mind there is that we would follow the practice, with respect to tuna and the practice has been to permit the share of the wages of the crew to be paid out before the rest forfeited. This would be continued as far as the crew goes.

Mr. SHAROOD. So the \$750,000 valued catch you mentioned a minute ago is really not that.

Mr. BRENNAN. Each crew member gets a share. Perhaps Mr. Howard can answer that.

Mr. HOWARD. Just briefly, let me explain the way we have handled the situation with U.S. vessels, when they have been caught in violation. We have seized the entire catch, and then by process of remission, with the U.S. Justice Department involved, the expenses of the voyage have been paid and the crew members have been paid their share. This amounts to roughly 50 percent of the load. It varies upon the occasion and how much fish they have aboard.

In this case I assume that the thinking here is to handle these situations, if they occur, in the general manner.

Mr. POTTER. My last question is, under the Marine Mammal Protection Act, it seems to me you have additional sanctions that are available to you.

You can in fact, block, and here you have a very specific directive from the Congress to block the importing of catch from any vessel violating regulations which have been imposed against U.S. vessels and nationals.

Now, I ask you why has NOAA not published regulations governing the methods of catch which would be permitted to U.S. vessels under the Marine Mammal Act?

Mr. BRENNAN. As I understand, Mr. Potter, these regulations have to be cleared with the Marine Mammal Commission which, as you know, was just appointed last Wednesday.

Mr. POTTER. Right.

Mr. POLLOCK. Also, I might add that under the Marine Mammal Protection Act there is provision to get at American citizens whether they are on foreign vessels or not.

Mr. POTTER. You bet. That was very specifically one of the objectives of the act.

May I then transfer my question into an exhortation that you get with it and propose regulations and coordinate with the Marine Mammal Commission and do it.

That is all, Mr. Chairman.

Mr. DINGELL. The Chair thinks this is a matter of considerable importance.

This is a matter, as you know, of particular concern to this committee.

The Chair recognizes our chairman.

Mrs. SULLIVAN. I have no questions to ask of them.

I am anxious to get on with the other two witnesses.

Mr. DINGELL. Mr. Eckhardt?

Mr. ECKHARDT. I had a question of Mr. Pollock.

Do I understand that you now have an agreement with Westgate California Foods, specifically that their ships, although under the flag of a nation not a signatory to the Convention, will nevertheless comply with the Convention as if they were American-flag vessels?

Mr. POLLOCK. That is correct.

Mr. ECKHARDT. On what basis did you get that agreement, on a statutory basis, or just a bargaining proposition with respect to having some ability to seize their catch under certain circumstances.

Mr. POLLOCK. We did it under bargaining pressure—specifically, by letting their second vessel leave port when it was ready to go. Thus, a considerable financial pressure was exerted on them.

Mr. ECKHARDT. Westgate I gather is an American concern, totally American?

Mr. POLLOCK. Yes, sir, but the vessels would not be sailing under the American flag.

Mr. ECKHARDT. But the vessels are owned by Westgate?

Mr. POLLOCK. Yes, sir.

Mr. ECKHARDT. Now, is there not any way you can get at this question?

Mr. POLLOCK. Just a moment. I did not want to give a wrong answer.

Mr. BRENNAN. As I understand it, sir, each of the vessels is owned, as is customary, by a corporation set up to own that vessel.

Mr. ECKHARDT. But Westgate owns the corporation, does it not?

Mr. BRENNAN. Through a series of corporate actions.

Mr. ECKHARDT. It seems to me utterly ridiculous in order to get at the vessels under foreign flag one must use lefthanded means of insisting on an agreement.

I cannot see any reason in the world why you could not act directly, or at least we could not draft a statute that would permit you to act directly against the full owners of the foreign-flag vessel and make that vessel comply with American law. They are within our jurisdiction. We can control them under our own statutes, and you say that we have no law to do that.

Mr. POLLOCK. Mr. Congressman, I am saying that with certain amendments to the act we could do that. We cannot under the existing law.

Mr. ECKHARDT. Well, it certainly seems to me that we ought to do that.



Would you not agree?

Mr. BRENNAN. Yes, sir.

Let me clarify a point for the record.

Mr. Congressman, Westgate Seafood Products, Inc. is a Puerto Rican corporation, although the president is a U.S. citizen. The subsidiary corporation for one of the vessels, Motor Vessel *Atlantis*, MV, is a Netherlands Antilles corporation, and Marine Resources, MV, is a Netherlands Antilles corporation for the other vessels.

Mr. ECKHARDT. But each of these corporations is wholly owned by either, perhaps directly or indirectly, by Westgate, are they not?

Mr. POLLOCK. Yes.

Mr. ECKHARDT. Of course, we attach responsibility under the Securities Act, for instance, in cases where only 5 or 10 percent of the ownership is in a particular company.

It seems to me that we could utilize either some of these acts, or perhaps the Holding Company Act, to devise a statute by which we can reach vessels and pierce this corporate veil.

Now, there is one other question I would like to ask you, and that is, Mr. Pollock, is it primarily a problem of enforcement of the Convention as to the vessels sailing under Convention member flags, or is it primarily a problem of preventing exploitation by vessels under other flags who are not legally subject to the Convention itself?

Which is the big problem involved here?

Mr. POLLOCK. I think it is a combination of both, and I think it might be appropriate to turn the microphone over to Mr. Howard in order to provide you with some statistics.

Mr. ECKHARDT. I just wanted to say it may very well be to have some international surveillance force, but that would not reach the second question, the major question of exploitation by vessels under flags which are not subject to the Convention.

Mr. POLLOCK. Again, we have the embargo provisions under Tuna Conventions Act, and we have the Pelly amendment and with the amendments that I was suggesting we might make to the Conventions Act, we could get a handle on American citizens that might be sailing under these foreign flags.

Mr. ECKHARDT. You do have some figures on that breakdown?

Mr. HOWARD. Just one quick comment.

In our view now there are approximately six countries which cause problems because of the big vessels they operate. Of those, Canada, Japan, and Panama are members of the Commission. The remainder, the Netherlands, Spain, and France, are not members.

As Mr. Pollock pointed out, France has nearly been approved for membership, and will be joining shortly.

Spain is apparently considering the possibility of membership.

Mr. ECKHARDT. Thank you, Mr. Chairman.

Mr. DINGELL. Mr. Everett?

Mr. EVERETT. One brief point.

Mr. Garske, could you briefly tell us what do you consider and whom do you consult with when you authorize the transfer of a vessel foreign? Take the vessel *Atlantis* for example.

Mr. GARSKE. In case of a fishing vessel we have the clearance from NOAA.



Mr. EVERETT. You always get a clearance from NOAA?

Mr. GARSKE. Yes.

Mr. EVERETT. Is this the first time an American tuna vessel has made application for transfer foreign?

Mr. GARSKE. I do not know.

Mr. EVERETT. Will you check the record and see if there are any prior approvals?

Mr. POLLOCK. Mr. Howard can answer that.

Mr. HOWARD. Yes, there have been some. I have them all listed here, and we can make them available. There have been 21 or 22 vessels from 1970 through the beginning of 1973, and there may have been one or two others recently.

Mr. EVERETT. So there are 21 or 22 American built vessels built since 1970 operating with American crews that have gone foreign?

Mr. HOWARD. I should point out to you, however, that initially most of these were old vessels that our people wished to get rid of, and I think Mr. Felando would wish to get rid of. They are low tonnage, old vessels. They are something on the average of 15 years old or more and with a capacity of only about 300 tons.

The situation that is under discussion here is quite a different story, because it involves brand new vessels coming right out of our shipyards.

Mr. DINGELL. The Chair agrees on that point.

The Chair would also like a list, if you please, gentlemen, of these vessels that was requested.

Mr. POLLOCK. We can get it for the record now if you want it.

Mr. DINGELL. Definitely will be helpful.

[The material follows:]

U.S. VESSELS TRANSFERRED TO FOREIGN FLAGS (1970-73)—SALE OF U.S. VESSELS TO FOREIGN COUNTRIES

| Vessel              | Year Sold | Sold to         | U.S. Interest     | Built | Carrying capacity (tons) |
|---------------------|-----------|-----------------|-------------------|-------|--------------------------|
| Antoinette B.....   | 1970      | Mexico.....     | .....             | 51    | 277                      |
| Lou Jean.....       | 1970      | do.....         | Believe none..... | 46    | 284                      |
| Cape Falcon.....    | 1970      | do.....         | do.....           | 45    | 200                      |
| Portuguesa.....     | 1970      | do.....         | do.....           | 45    | 200                      |
| Jeanne Lynn.....    | 1971      | do.....         | 25 percent.....   | 51    | 220                      |
| Ranger.....         | 1971      | Costa Rica..... | .....             | 45    | 298                      |
| South Coast.....    | 1971      | Mexico.....     | 49 percent.....   | 47    | 209                      |
| Saratoga.....       | 1971      | do.....         | .....             | 51    | 250                      |
| San Antonio IV..... | 1971      | Ecuador.....    | .....             | 37    | 75                       |
| Cathy Lynn.....     | 1971      | Costa Rica..... | .....             | 47    | 373                      |
| Cape Ann.....       | 1971      | do.....         | 66 percent.....   | 46    | 377                      |
| Dominator.....      | 1971      | Mexico.....     | .....             | 54    | 329                      |
| Sun Europa.....     | 1971      | Panama.....     | .....             | 45    | 367                      |
| Mermaid.....        | 1972      | Peru.....       | .....             | 45    | 600                      |
| Coimbra.....        | 1972      | Panama.....     | .....             | 46    | 290                      |
| Beverly Lynn.....   | 1972      | Costa Rica..... | .....             | 49    | 220                      |
| Elizabeth.....      | 1972      | Mexico.....     | .....             | 46    | 490                      |
| Delores M.....      | 1972      | Ecuador.....    | .....             | 44    | 174                      |
| Conquest.....       | 1973      | Mexico.....     | .....             | 63    | 650                      |

Note.—Average age when sold 22. Average carrying capacity 309.

*Transfer of "Atlantis" and "Mariner" to Netherlands flag:* With few exceptions (perhaps two larger vessels five years or older to Mexico) vessels which have transferred to a foreign flag in the past have been old and small, primarily less than 400 tons carrying capacity and in the order of 20 years of age or more. *Atlantis* (1500 tons capacity) and *Mariner* (1000 tons) came directly out of the shipyard and are the most modern vessels available. In the case of *Atlantis* and

*Mariner*, the foreign corporation owning them is controlled by a U.S. interest—apparently the major owner. U.S. interests in foreign companies which have purchased U.S. vessels previously have been minor or nonexistent.

#### TOTAL SUPER SEINERS UNDER CONSTRUCTION IN U.S. YARDS

(This does not include vessels which are merely in the planning stage).

In Tacoma yards:

Martinolich Shipyard—3 Vessels.

Tacoma Boat, Inc.—1 Vessel.

In San Diego yards:

Campbell Machinery, Inc.—6 Vessels.

San Diego Marine Construction Co.—4-5 Vessels.

The plans for foreign registry are not known except for the "King Oscar" which proposed to have a Panamanian flag. An application for this was submitted. Subsequently we objected to the transfer of the "King Oscar" and we now understand that the vessel will be registered under the U.S. flag. The ownership of the Oceanus Industries, Inc., which owns the vessel, is apparently distributed as follows:

4 U.S. citizens own 49.9 percent.

King Oscar, Ltd., a Bahamian corporation, owns 50.1 percent.

The director of Oceanus Industries, Fitchjof Bjilland, is a citizen of Norway and, perhaps the controlling owner of the Bahamian corporation. This is the first Norwegian money we have seen in the business in the Eastern Pacific.

Mr. DINGELL. The Chair would also like to know about the financing devices that were used, if you were aware of them, whether Export-Import Bank or some other bank, for the transfer foreign of these vessels.

Mr. POLLOCK. We can provide that for the record if available.

Mr. DINGELL. I want to ask you, Mr. Pollock, to do your best.

We will also seek to procure the cooperation of Eximbank in this matter, and hopefully will receive better cooperation on that request than we have heretofore.

Mr. POLLOCK. Mr. Chairman, of these 21 vessels that were transferred to foreign flags, it is interesting that 10 of them were transferred to the Mexican flag, and four of them to the Costa Rican flag.

Mr. DINGELL. I would like to know the country to where they were transferred, and the circumstances, the tonnage, and so forth. That would be very helpful.

Mr. EVERETT. Mr. Garske, on each one of those vessels, you or some one in your Agency were consulted on the transfer foreign of these vessels?

Mr. GARSKE. Yes.

Mr. EVERETT. Are you required to do this by law?

Mr. GARSKE. No, this is part of our operating procedures.

Mr. EVERETT. Is there any one else you check with besides NOAA?

Mr. GARSKE. Depending on the vessels, it could be the Department of Defense.

Mr. EVERETT. I am talking about fishing vessels.

Mr. GARSKE. The Coast Guard. If we are talking about a new purchaser, the Bureau of International Commerce.

Mr. EVERETT. Has Export-Import Bank ever consulted with you or anyone else in your Agency with respect to any conditions to be attached to vessels on which applications for loans have been made?

MR. GARSKE. I am fairly certain there has been no formal contact. There may have been some informal, but basically there is no clearance procedure with that bank.

MR. DINGELL. Would you direct yourselves to the five vessels involved, the *Atlantis*, the *Mariner*, the *Sea Treasure*, the *Captain Scott*, and the *Mariner II*, and the Chair will ask you gentlemen was there any formal communication with any of you by Export-Import Bank with regard to the sale of these vessels abroad?

MR. GARSKE. As far as the Maritime Administration is concerned, there is no formal clearance.

MR. POLLOCK. I am not aware of any.

MR. DINGELL. Gentlemen, would you check your records and inform us as fully as you are capable of any form of communications or any communication with regard to the selling abroad of these five vessels?

MR. POLLOCK. I think that *Mariner I* and *Mariner II* are the same vessel, Mr. Chairman.

MR. DINGELL. My information is that it is not. We are trying to untangle this net ourselves.

MR. EVERETT. I understand there are two vessels that have already been transferred, and there are three on the way. These are the other three we are talking about.

I was told myself personally that there is some coordination between your Agency and Marad with respect to Export-Import Bank, and we would like to know what type of coordination there is, whether informal or formal, and with what people, particularly with respect to the last two vessels. It could have been on some vessels on which Export-Import Bank made loans other than the two we are talking about here.

I have no more question Mr. Chairman.

[The information referred to follows:]

JUNE 19, 1973.

NED P. EVERETT, Esq.,

Counsel, Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR MR. EVERETT: In response to your request, I am forwarding herewith a copy of a letter which we have submitted to the Export Import Bank regarding the contemplated arrangement for the financing of nine tuna vessels to be built in the Campbell Industries Yard in San Diego for a Mexican Government corporation. Mr. Stockton had requested information concerning our contacts with the Export Import Bank. On several occasions during the past two years, Mr. Blatt of my staff has had telephone conversations with employees of the Export Import Bank regarding various aspects of ship mortgages. In addition, I understand that Mr. Wilson of the National Marine Fisheries Service had been contacted regarding transfers of fishing vessels to foreign groups. In the past these contacts have been informal. As you may know, until the construction of the vessel ATLANTIS there were no instances in which a major tuna seiner has been built for delivery to a foreign flag operator. This may explain the lack of necessity for close, formal contact in the past.

With respect to the Mexican transfer, I understand from Mr. Wilson that we were advised by telephone sometime in May regarding the possibility that the Export Import Bank might receive a request for assistance, and we were formally notified and our opinion requested by the letter of June 8 referred to in Dr. White's attached note to the Export Import Bank.

Sincerely,

JAMES W. BRENNAN,  
Acting General Counsel.

Attachment.



JUNE 13, 1973.

Hon. DON BOSTWICK,

*Executive Vice President, Export-Import Bank of the United States, Washington, D.C.*

DEAR MR. BOSTWICK: This is in response to your letter of June 8, 1973, requesting the views of the National Oceanic and Atmospheric Administration regarding a proposed arrangement whereby nine tuna vessels would be constructed by Campbell Industries for exportation to Mexico and operation in the tuna fishery by a corporation wholly owned by the Mexican government. It is likely that the vessels will be operated within the regulatory area covered by the Convention for the Establishment of an Inter-American Tropical Tuna Commission (IATTC). On April 17, 1969, the predecessor of NOAA's National Marine Fisheries Service, the Bureau of Commercial Fisheries, published a notice in the Federal Register formally determining that sufficient vessels were employed in the yellowfin tuna fishery in the Eastern Tropical Pacific to take the maximum sustainable yield and giving notice that no application for loan or mortgage insurance would be thereafter approved for construction or reconstruction of vessels to be used in that fishery unless the applicant would permanently withdraw from the fishery one or more vessels with a total fishing capacity at least equal to that of the proposed vessel.

Since that time, the number of vessels in the yellowfin tuna fishery, both foreign and (unsubsidized) domestic, has increased substantially. Federal actions which encourage further construction and use of vessels in the fishery will result in overcapitalization of the fleet. Therefore, American and foreign fishermen now engaged in the yellowfin tuna fishery in the regulatory area are likely to be adversely affected by an increase of this magnitude in the number of vessels operating in the fishery. However, we have been advised informally by Campbell that the Mexican government has already determined that the vessels will be built, preferably in the United States, but in foreign yards, if satisfactory arrangements cannot be made to have them built in the United States. If this is so, and we trust that you will look into this further, it appears that U. S. fishermen will be faced with the increased competition regardless of your decision on the application.

If the proposed vessels are operated in accordance with the total catch limitation imposed by the conservation regime of the Inter-American Tropical Tuna Commission, there should be no adverse effect on the fishery resources in the regulatory area; however, the American share of the catch would probably decrease. If the additional nine large seiners are operated in the fishery without regard to the IATTC conservation regime, the conservation of the yellowfin tuna resource could be seriously affected. However, since Mexico is represented on the Commission, we must assume, in the absence of evidence to the contrary, that the nine vessels would be operated in accordance with the IATTC conservation regime.

Up to this time, we have not been seriously concerned about the capability of the Mexican government to regulate Mexican vessels fishing in the regulatory area. The amount of the catch especially allocated for the Mexican fleet by the Commission in relation to the capacity of the fleet has, up to now, made it virtually impossible for Mexican vessels to violate the conservation regime. With the addition of these modern large seiners, an effective surveillance and enforcement scheme will be necessary if Mexico is to be in a position to assure that its fleet will continue to operate in accordance with the IATTC conservation regime. American vessels must operate on a basis of equality with Mexican vessels in the competition for the resource. This involves not so much a question of the willingness of the Mexican government but its ability to enforce the Convention.

In addition to the question of conservation of the tuna resource and competition between American fishermen and Mexican fishermen, we believe that there exists a second serious issue which must be considered.

The harvesting of tuna by the use of purse seining techniques often involves setting the nets on schools of porpoise associated with the tuna. Although most of the porpoise are permitted to escape by various techniques employed by the fishermen, there is still a significant accidental killing of porpoise in the harvesting of the tuna resource. Under the Marine Mammal Protection Act of 1972, the Secretary of Commerce is directed to promulgate regulations to reduce



to the lowest practicable level the taking of marine mammals incidental to commercial fishing operations. The ultimate objective of the regulations is to approach zero mortality of marine mammals taken in connection with commercial fishing operations. In this regard, the regulations governing fishing techniques and gear which may be proposed by the Secretary of Commerce to reduce the incidental taking of these marine mammals may adversely affect the efficiency of the U. S. fleet when viewed solely from the viewpoint of the tuna caught as a function of fishing effort.

Section 108(a)(2) of the Marine Mammal Protection Act of 1972 requires the Secretary of Commerce to initiate through the Secretary of State negotiations with all foreign governments engaged in commercial fishing operations, which are found by the Secretary to be unduly harmful to any species of marine mammal, for the purpose of entering into international agreements to protect marine mammals. In addition, section 111(c) of that Act directs the Secretary of Commerce and the Secretary of State to commence negotiations within the IATTC to effect essential compliance with the regulatory provisions of the Marine Mammal Protection Act of 1972 so as to reduce, to the maximum extent feasible, the incidental taking of marine mammals by vessels involved in the tuna fishery. We have already held some discussions with the IATTC on this subject and plan to hold more.

In order to effectively comply with these requirements of the Marine Mammal Protection Act of 1972, we believe that it would be appropriate, prior to the time at which the vessels would be operating in the fishery, to come to some agreement with the government of Mexico to assure protection of marine mammals commensurate with that provided in U.S. law.

Accordingly, NOAA would have no objection to the grant of a preliminary commitment on the proposed arrangement provided that such preliminary commitment is conditioned upon the existence of a suitable arrangement between the governments of Mexico and of the United States prior to the granting of the credit of \$12,150,000. At a minimum, this agreement would: (i) establish a cooperative surveillance and enforcement arrangement which would enable the modern electronic detection system used by the United States for surveillance of its fishing vessels to be employed with respect to the operation of Mexican vessels to assure compliance with the IATTC conservation regime and (ii) assure that the Mexican government will establish and enforce regulations requiring fishing vessels of Mexico to operate in a manner consistent with the Marine Mammal Protection Act and regulations promulgated thereunder.

If this condition is contained in our preliminary commitment to the application, NOAA would immediately request the approval of the Department of State to enter into joint negotiations with the appropriate office of the Government of Mexico. We would, of course, keep you informed of the progress of any such negotiations.

Because of time constraints, we have not had an opportunity to obtain the view of the Department of State to the course of action proposed. Inasmuch as a foreign government is involved, you may wish to obtain the view of that Department.

Sincerely,

ROBERT M. WHITE,  
Administrator.

Mr. DINGELL. Mr. Sharood?

Mr. SHAROOD. Just one final passing shot at Mr. Pollock.

With regard to my earlier question on the statement to the effect that the fishing industry was cooperating with you and your Agency in reporting the activities of foreign-flag vessels. In the future does your Agency intend to rely upon such information as you apparently did with respect to the *Atlantis*? Do you intend to rely on that kind of information for the purpose of acting pursuant to the Tuna Convention, the Tuna Act?

Mr. POLLOCK. Of course, we will rely on that kind of information, but not solely.

Mr. SHAROOD. What if it is the only information made available to you in regard to the specific incident or violation?

Mr. POLLOCK. I think it would be like any other question of law. If the information is sufficiently documented and can be proved, we would use it. If it is not good information we would not use it. However, we do have other devices, as I have indicated, which will be especially useful if we can get the other countries in the Commission to participate.

Mr. SHAROOD. Let us say they will not cooperate.

For example, let us say that Captain Medina is out there and has reported in, as he is required to do, and by triangulation, you have determined his precise position, and he is just outside the Convention area, and when he reports in he says I see 15 miles away inside the Convention area such and such a ship fishing.

Mr. POLLOCK. The Coast Guard would take a look.

Mr. SHAROOD. Perhaps I am off base and do not know the scientific facts of this.

Mr. POLLOCK. I think it is a good example. The Coast Guard would go out and look, if possible.

We have profound respect for Joe Medina, and would certainly believe him. We would try to get the necessary statements under oath to properly document the incident.

Mr. BRENNAN. If I could make one point here.

This is a rather complicated scheme of enforcement. During the closed season, it is not illegal to be fishing inside the closed area. The illegal act is catching more than 15 percent yellowfin tuna during the closed season.

Mr. POLLOCK. He can catch as many skipjack as he wants.

Mr. SHAROOD. Is it so complicated that it is impossible?

Mr. POLLOCK. We do not think it is impossible.

Mr. DINGELL. Any further questions?

Mr. Potter?

Mr. POTTER. One question.

You have indicated, Mr. Pollock, that you would submit to us legislation to deal with the problem in perhaps a more precise way than the existing legislative framework would allow.

Mr. POLLOCK. In the form of some amendments to the act, yes.

Mr. POTTER. Before then, however, and if possible, by next Friday, I would like to have from the Department of Commerce a letter indicating what steps you propose to take in the interim pending the passage of such legislation to do what you can within your existing authorities to cure, or to mitigate the problems we have been discussing today, and you do not need to address yourself to it right now.

Mr. POLLOCK. I want to make sure what it is that you want.

Mr. POTTER. I will say it another way.

I would like to know what steps you propose to take in the future pending passage of any legislation that you may recommend under the tools that you presently have available to you to prevent or inhibit the kind of activity that we have been talking about.

One of the tools obviously you have is your hold on, through Marad, on transfers to foreign flag. But you may have other tools,

and what I would want you to do, is look through your inventory and tell us what tools you have, and what tools you propose to use until new legislation can be gotten out.

I would ask it by the 25th, not now.

Mr. POLLOCK. That is a week from tomorrow?

Mr. POTTER. A week from Friday.

That is all I have, Mr. Chairman.

[Additional information follows:]

The Department of Commerce is looking closely into the embargo provisions of the Tuna Conventions Act to determine whether there exists sufficient information to invoke these provisions against any of the nations exporting yellow fin tuna to the United States.

Mr. DINGELL. Madam Chairman?

Mrs. SULLIVAN. No questions.

Mr. DINGELL. Gentlemen, the Chair does thank you.

Would it be possible for you to wait with us while we hear from the Export-Import Bank?

Further questions may arise, and we may need your assistance.

The Chair now calls Mr. Don Bostwick, Executive Vice President, Export-Import Bank of the United States, together with Mr. John E. Corette III, general counsel.

Identify yourselves for the benefit of our reporter and the committee.

I understand, gentlemen, you have no prepared statement, but are prepared to answer questions, so if you will, please identify yourself then the Chair will recognize the chairman of this full committee, who will direct questions to you.

**STATEMENT OF DON BOSTWICK, EXECUTIVE VICE PRESIDENT,  
EXPORT-IMPORT BANK OF THE UNITED STATES; ACCOMPANIED BY JOHN E. CORETTE, III, GENERAL COUNSEL**

Mr. BOSTWICK. I am Don Bostwick, and on my left is John Corette, the general counsel of the Export-Import Bank.

Although we do not have a prepared statement as you say, Mr. Chairman, because the first we knew of the committee's interest was at 4:30 on Monday, we have tried to put together some thoughts with which we would like to begin, with your permission.

Mr. DINGELL. If that be your wish, the Chair will recognize you for that purpose.

Mr. BOSTWICK. I think it is important that we have the opportunity to explain, at least briefly, what the Export-Import Bank does.

Since its inception in 1934, and more particularly since its re-incorporation in 1945, the Bank has stood behind U.S. exporters in helping meet those credit needs of their customers which the commercial banking system could not, or was not willing to, fulfill.

Today, however, the credit needs of our overseas customers have increased greatly and, thus Eximbank has developed a full range of new export financing facilities to meet these expanding needs.

Each of Export-Import Bank's programs is responsive to the mandate of the Congress that the Bank should supplement and encourage, and not compete with, private capital.



First, Mr. Chairman, Export-Import Bank has the authority from the Congress to make direct loans. We make such loans in cooperation with private capital in a program we call participation financing.

Export-Import Bank will lend directly to the overseas borrower an amount equal usually to 45 percent of the purchase price, after a 10 percent cash payment, and will help arrange a loan directly to the overseas borrower by a commercial bank for the remaining 45 percent.

In another program which we call the Cooperative Financing Facility we work with financial institutions overseas in financing exports of U.S. goods and services by providing loans to those institutions, equal again usually to 45 percent of the purchase price.

This latter program is perhaps the most exciting facility that we have, but I should point out that in the area of tuna boat financing neither the direct loan program, where we lend money directly to the buyer overseas (statement later corrected), nor under the cooperative financing facility, where we work through overseas financial institutions, have been involved.

Now, this leads us to a second area of Export-Import Bank activities.

The Bank has the authority from the Congress to guarantee and insure export obligations.

In one program that we call commercial bank exporter guarantees, Export-Import Bank will guarantee repayment of export debt obligations acquired by U.S. banking institutions without recourse from U.S. exporters. By using this program, the U.S. exporter can sell his goods on terms to the foreign buyer, accept the borrower's note, and then sell that note to his local commercial bank in the United States. A commercial bank is willing to buy that note often because the Export-Import Bank will guarantee the payments on the note.

Now, in contrast to the direct-loan procedure which takes Export-Import Bank to the marketplace, the commercial bank exporter guarantee program takes Export-Import Bank directly to the exporter through the vast network of the U.S. banking system.

In a parallel program handled in cooperation with FCIA, which is an association of some 50 stock and mutual insurance companies, U.S. exporters may insure their export credit receivables against loss resulting from failure of their buyer to pay, for commercial or political reasons. The exporter may retain those insured obligations in his own accounts receivable, or may borrow against the insured collateral, or he may sell the insured obligations to his commercial bank. Several types of policies are available for this purpose.

We will be discussing the bank guarantee program and the FCIA insurance program with regard to tuna vessels.

Now, there is a third area of our operations. Export-Import Bank under its commercial bank export credit loan program, more popularly known as the discount loan facility, will lend to a U.S. commercial bank or an Edge Act corporation up to 100 percent of their eligible export debt obligations.

This program, which always works through an advanced commitment procedure, assures banks of liquidity for their export transac-

tions and also offers banks a means of countering foreign government-supported export financing in highly competitive situations.

These then are the Export-Import Bank's tools for fulfilling its assignment for export expansion.

The second area I discussed with you and the third area I discussed with you are the areas relevant to the committee's interest today.

Now, let us talk about the financing of tuna vessels. When we talked with your investigator yesterday morning we had not had the benefit of our Treasurer-Controller's search of his records to determine what was Export-Import Bank's complete record with regard to the financing of tuna vessels. Now we have that record, and it is not a lengthy one.

In December of 1971, through our insurance program—which is handled by a group of private insurers, of course, in association with Export-Import Bank—we incurred an obligation of \$360,000 to support the sale of a \$700,000 used tuna boat to Mexico.

In a second transaction, in February of this year, we gave the Chase Manhattan International Banking Corp., located in Los Angeles, an advance commitment for a discount loan in an amount equal to \$2.8 million to support the export of a vessel valued at \$3.5 million. This was the motor vessel *Atlantis*.

Mr. DINGELL. That was February 5?

Mr. BOSTICK. February 6.

On April 30, the Board approved, subject to further clearance among the agencies, the support of sales to Senegal of three tuna vessels.

Mr. DINGELL. Three tuna vessels?

Mr. BOSTWICK. Yes.

Mr. DINGELL. Does that include the *Atlantis*?

Mr. BOSTWICK. No, it does not.

Mr. DINGELL. So as of April 30 the *Atlantis* plus three tuna vessels.

Now, are these guarantees and other actions by the Board to the same individual, or to the same corporation, or to a series of different corporations?

Mr. BOSTWICK. They are all different.

Mr. DINGELL. Would you please, for the benefit of the committee, enumerate the names of the vessels, the names of the corporations, and so on?

Mr. BOSTWICK. We do not have the names of the vessels for Senegal. The contracts have not been let for construction, as we understand it.

Mr. DINGELL. I see.

Mr. BOSTWICK. This is the point, if I might say, that Mr. Pollock was correctly trying to make in his testimony.

Mrs. SULLIVAN. I cannot hear you at all.

Mr. DINGELL. We are having a little trouble up here. Please speak up.

Mr. BOSTWICK. Hopefully, we are approached at a very early stage in the transaction.

Mr. DINGELL. You were approached on February 5 with regard to the *Atlantis*. That was not very far in advance of the transaction.

Mr. BOSTWICK. Let me come back to that, if I may, Mr. Chairman.

Mr. DINGELL. I want to harvest a little more with regard to these three other vessels. I would like you to indicate to us, if you please, the amounts and the individuals, and if you can, indicate the names of the vessels.

Mr. BOSTWICK. The total value of the sale will be \$10.5 million, and the obligor will be SOSAP.

Mr. DINGELL. And who is SOSAP?

Mr. BOSTWICK. It is a public corporation.

Mr. DINGELL. I cannot hear you.

Mr. BOSTWICK. A public corporation.

Mr. DINGELL. Of what country?

Mr. BOSTWICK. Senegal, in Africa.

Mr. DINGELL. Are these to be used in fisheries in the Atlantic or Pacific?

Mr. BOSTWICK. They will be used, we are told, in the waters of Senegal.

Mr. DINGELL. These are new vessels?

Mr. BOSTWICK. Yes.

Now, may I go to a further transaction?

On May 14, just this past Monday, we approved an advance commitment, again to the Chase Manhattan Bank in Los Angeles, for a discount loan of \$2,480,000 to support the sale of a tuna seiner with a contract price of \$3.1 million to Oceanus Industries in Panama City.

Mrs. SULLIVAN. What was the country?

Mr. BOSTWICK. Panama.

Mr. Chairman, if I may discuss the *Atlantis* for a minute.

Mr. DINGELL. Please do so.

Mr. BOSTWICK. On September 28th of last year we received an application from the Bank of America for a bank guarantee to cover the sale of the MV *Atlantis*, at a contract price of \$3 million.

I am sorry I do not have the particulars of who, how and when, but I do have a record of a Department of Commerce clearance received on October 12, 1972.

Mr. DINGELL. October 12, did you say?

Mr. BOSTWICK. Yes, with the following condition: \* \* \* provided Maritime's approval of the transfer of ownership is obtained."

Mr. DINGELL. Is that a written clearance?

Mr. BOSTWICK. I do not believe it would be.

Mr. DINGELL. It is not?

Mr. BOSTWICK. We do this by telephone.

Mr. DINGELL. Mr. Potter reminds me the phrase we are discussing is "an informal communication."

Mr. BOSTWICK. Right.

Mr. DINGELL. To assist the committee, would you advise us who it was in your Agency that made the informal communication, and who it was that responded informally in the Department of Commerce?

Mr. BOSTWICK. I believe you will find that the person from Export Import Bank who made the inquiry was a loan officer, Karnig Eki-



zian. I have no record of whom he talked with, but we can try to obtain that other name for you.

Mr. DINGELL. That would be helpful.

[The information follows:]

#### CONTACTS WITH NOAA

The persons in the National Oceanic and Atmospheric Administration with whom Mr. Karnig Ekizian, Loan Officer, Export-Import Bank, spoke with respect to the pending MV ATLANTIS transaction are as follows: Herbert L. Blatt, Staff Attorney; Richard Soloman, Staff Attorney Office of the General Counsel; National Oceanic and Atmospheric Administration; Department of Commerce.

Mr. DINGELL. The Chair does again inform you, as I informed Mr. Corette, that it is the full intention of the Chair that you will be visited by the same member of my staff who was down there the other day, and did not get a chance to see the paper.

You will at that time make those papers available. If you have any problem, I would like you to inform me now, so we can get a subpoena drawn up.

We are all together here.

Would you inform me whether you would wish to make these papers available to Mr. Stockton of my staff, and hearing counsel of the committee, or would you like a subpoena presented?

Mr. BOSTWICK. We would like to cooperate with you to the extent of our ability.

Mr. DINGELL. Do you wish to cooperate with or without a subpoena?

Mr. BOSTWICK. May I finish my statement?

Mr. DINGELL. Surely.

Mr. BOSTWICK. We will provide the committee with all the information that we have available, which is not furnished to us on a privileged basis.

These files contain data submitted to us in confidence by the applicants.

Mr. DINGELL. That does not impress me, I wish to inform you, and I am going to ask you at this point to submit to this committee a specific memorandum citing the authority under which you may withhold from this committee any information in your files.

Mr. BOSTWICK. We will provide such a statement.

Mr. DINGELL. And I intend to have that reviewed by the Government Operations Committee, the Subcommittee on Freedom of Information, and it is not my intention to sit idly in this Chair to be told by any Government agency, yours or anybody else's, that you can withhold documents from me or anybody else that are in the possession of the Federal Government.

Do you want to cite the specific section of the Freedom of Information Statute that you are using now for telling me you are going to withhold any part of the record?

Mr. BOSTWICK. I will provide that statement to you.

Mr. DINGELL. I would like it now.

Mr. BOSTWICK. I am not prepared to give you a statement at this point.

Mr. DINGELL. I assume you were aware that this question was going to arise.

I had a discussion with Mr. Corette on the telephone.

Mr. Corette, do you have a citation with you?

Mr. CORETTE. Mr. Chairman, I do not have the citation with me. I have not had a chance to get it since our conversation at approximately 1 p.m. today.

Mr. DINGELL. Mr. Stockton was down there and asked to look at the files.

Mr. Everett called you this morning at 9 o'clock. Neither of them have gotten the information this committee wanted.

Mr. BOSTWICK. Mr. Chairman, we attempted at that time to the best of our ability to provide Mr. Stockton all the information pertinent to his questions. After he had finished asking his questions, he asked whether or not he could see the files.

Mr. DINGELL. He was instructed by me to go down and see the files.

Now, we will put him on the stand, if we really get right down to it, but it would be much easier for you folks to cooperate when you come up here.

I am fully prepared to cooperate with you, and we will get it informally or by subpoena.

Mr. BOSTWICK. After the end of his questions he asked if he could see the files. I told him he could not. I explained to him twice, I believe, the reasons why we were reluctant to let him look at the files, and I felt he understood the answers, and the reasons we gave him.

Mr. DINGELL. Apparently he did not, because he reported back to me that he did not.

Mr. Everett then this morning, counsel of this subcommittee, at my request, phoned you again, and made the same request.

Mr. BOSTWICK. And I think he was informed that we would be happy to cooperate with the committee in providing all the information that we possibly can, but we have credit information on potential buyers, and I do not think that is pertinent.

Mr. DINGELL. This occupant of the Chair views cooperation with this committee as making files available to our staff. That may be a curious view of the responsibility of the subcommittee chairmen, but that is what they are.

Mr. BOSTWICK. Well, we have the responsibility to assure people who transact business with the Export-Import Bank that they can provide us with honest and accurate information upon which a Board of Directors can make a good decision.

Mr. DINGELL. Let me ask you this.

Is there a specific section in your statute which affords you the right to deny congressional committees access to your files?

Mr. BOSTWICK. No.

Mr. DINGELL. You must be cognizant of your fundamental statute.

Mr. BOSTWICK. You are very correct, and the Congress in other instances has utilized the services of the GAO.

Mr. DINGELL. Well, this committee is prepared to do that, if need be.

Mr. BOSTWICK. But they understand this bank-client relationship.

Mr. DINGELL. Mr. Everett understands the relationship, and also the relationship of a subordinate agency of this executive branch and the Congress of the United States.

Now, I would like to be a good fellow, but as I have informed you, I intend to know what is going on here.

Mr. BOSTWICK. We have no intention of depriving you of knowing what is going on.

Mr. DINGELL. I get the distinct impression that you do not want to give me the formula.

Mr. BOSTWICK. If you will let me finish my presentation.

Mrs. SULLIVAN. I do not know if we need all of this financial information to get to the point that I think we are trying to get at today.

Mr. DINGELL. I do not know what we are trying to get at.

Mrs. SULLIVAN. We are fishing for information.

Mr. BOSTWICK. I understand that, Mrs. Sullivan.

Mrs. SULLIVAN. But this just came up to yesterday, and I would like to ask you some questions on this.

Mr. DINGELL. I intend to pursue this matter further.

Mrs. SULLIVAN. What kind of an agreement did you have when you made the loan for these three vessels for the country of Senegal?

As chairman of this Full Committee, I am very much interested in the preservation of our own fishing fleets, and as a member of the Banking and Currency Committee for 19 years, I am very much concerned about information that we had yesterday.

I have gotten together with some of our experts on the Banking Committee to help me with some questions that you may not be able to answer now, but I think you can answer them later for the record and help clear up this problem.

The Export-Import Bank was created as we know to aid in financing and to facilitate exports and imports between the United States and foreign countries or agencies thereof. The Export-Import Bank throughout its history has, in general, performed commendably in meeting this congressional objective. The Banking and Currency Committees which have primary jurisdiction of the Export-Import Bank have consistently recommended and the Congress has consistently approved increases in the ceiling lending limits of the Bank, due primarily to the fact that it has facilitated U.S. exports and thereby had a positive effect on our balance of payments and assisted in creating or continuing to assure domestic employment at home.

All this does not mean to say that at times we have not had our troubles with the Export-Import Bank. This brings to mind the matter of military sales and credits by the Export-Import Bank which was done without proper information to the members of the Banking Committee and the Congress, but which again I hasten to add was subsequently amicably resolved in hearings so that now the committee and the Congress is properly informed of such sales and credits.

Among the questions today which we are concerned with here is the one of financing of tuna vessels, but the question before us, which granted involves the specifics of tuna vessels, also involves basic



policy and coordination between the Export-Import Bank and other agencies of Government as they relate to proper policy coordination.

Specifically, do we find the Export-Import Bank engaged in meeting its objective of facilitating the sale of U.S. exports, but at the same time aiding and abetting through no design of the Bank corporations in violating other policies or statutes of the United States, directly or indirectly?

Specifically, in discussing the question of financing tuna boats by the Export-Import Bank, how does the Export-Import Bank assure that U.S. law or treaties to which the United States is a participant are not violated?

What firm assurance does the Export-Import Bank have when a tuna vessel, owned by a foreign subsidiary of a U.S. corporation flying under a foreign flag, has not and will not violate the International Tuna Convention to which the United States is a party? I think this takes in the loan you made in February.

As I am told, the Export-Import Bank relies on the Department of Commerce to supply this assurance, but I do not really see how complete assurance can be given. Assuming for the moment that the treaty is violated, what recourse does the Export-Import Bank have in this matter? To whom do they appeal to effectuate what Exim calls an "event of default" and call the loan?

Does the Export-Import Bank have access to the domestic U.S. corporation which owns and controls the foreign subsidiary, or is the relationship between Exim and the foreign subsidiary with no recourse to the domestic parent?

Further, what are the tax implications by allowing the Export-Import Bank to facilitate the economy activities of a foreign subsidiary of a U.S. Corporation?

Do the American people and taxpayers gain or lose when we know that foreign subsidiaries of U.S. corporations do not have to pay taxes on profits earned until they are repatriated back to the United States?

Here we find the taxpayers, in effect, supporting the Export-Import Bank and, in effect, the ones who bear the burden of the Export-Import interest rate to facilitate the lending activities of the Export-Import Bank, but yet we find in this instance that the profits of the subsidiary of the U.S. parent are not being taxed by the U.S. Government.

These are just some of the questions that come to mind in beginning this inquiry and hearing with the Export-Import Bank.

Other questions concern themselves as to whether or not there can be proper coordination at all times where such matters as tuna boats are concerned, and the International Tuna Convention, where the State Department, the Department of Commerce, and foreign countries are involved. How can there be proper coordination between Exim and these other agencies?

Further, when we are dealing with multinational companies and foreign subsidiaries of U.S. corporations, what should be the Export-Import Bank's proper position? Are we making loans to foreign subsidiaries of U.S. corporations, which have the detrimental effect of reducing employment here at home?

Again, I say there are many questions involved in this matter other than the financing of tuna boats of foreign subsidiaries of U.S. corporations, and I hope, as the witnesses from Exim present their testimony, they will be thinking about answers to some of the questions I have raised.

Now, Mr. Bostwick, I will provide this to you before you leave, so you can let us have these answers as quickly as possible, and not just wait for the transcript to come back to you.

These are the problems that I think must be answered if we are to support and work with the Bank that is going to make loans to a fleet registered in a foreign country, under a foreign flag, and hurt our own industry, who are willing to pay the necessary taxes and work within the regulations and laws under the U.S. flag.

These are the questions that I have.

Mr. BOSTWICK. They are good questions, and I think we can provide answers to your satisfaction.

[The information referred to follows.]

#### EXPORT-IMPORT BANK ANSWERS TO MRS. SULLIVAN'S QUESTIONS

Chairman Sullivan has asked several questions in her statement presented to this hearing. Many of the questions were answered by subsequent testimony, yet the following deserve specific attention:

1. Do we find the Export-Import Bank engaged in meeting its objective of facilitating the sale of U.S. exports, but at the same time aiding and abetting through no design of the Bank corporations in violating other policies or statutes of the United States, directly or indirectly?

No. Eximbank takes all reasonable measures which it can to assure that recipients of Eximbank's financing support will not violate U.S. laws and treaties to which the U.S. is a party. In the normal case, U.S. laws usually would not be applicable since the products financed by Eximbank are used within specific jurisdictions under another sovereignty. However, where treaties are applicable, the Bank in the first instance attempts to assure that any recipient has not violated a treaty and to the extent possible the Bank attempts to assure that the recipient will not violate a treaty in the future.

For many years, Congress has expressed its intent that Eximbank should function in the manner of a commercial bank. Carrying forth this role, the Bank believes that its enforcement authority against recipients of its financing support best can be applied through the specific contractual provisions which include representations, warranties, covenants and conditions of its contracts involving direct credits, insurance guarantees and discount loans. These contracts are prepared for the specific export involved.

2. Specifically, in discussing the question of financing tuna boats by the Export-Import Bank, how does the Export-Import Bank assure that U.S. law or treaties to which the United States is a participant are not violated?

Eximbank consults with the other agencies and departments of the U.S. Government who have direct, primary responsibility for treaties and specific laws which do not fall within Eximbank's direct purview.

There is day-to-day contact with the Department of State concerning foreign policy, the Department of the Treasury concerning economic and monetary policy particularly as related to foreign economic policy questions, and the Department of Commerce concerning commercial policy. Moreover, there is weekly contact with each of these agencies and the Federal Reserve Board on a formal basis through the meetings of the National Advisory Council on International Monetary and Financial Policies (NAC). This formal coordination covers all actions taken by Eximbank; the respective members of the NAC have an opportunity to comment on all export transactions considered by Eximbank's Board of Directors on the following bases:

before the fact review of all transactions that exceed \$30 million in contract value,

before the fact review of all transactions acted upon by the Board during its formal weekly meeting,

before the fact review on all transactions which create special problems by reason of country of import or specific products, and

after the fact review of all transactions acted upon by the Board during its informal meetings.

Additionally, Eximbank is responsive to advice from other U.S. Government agencies, e.g., the Department of Agriculture and Atomic Energy Commission, concerning particular export sales.

Specifically, on tuna boats, Eximbank has a practice of obtaining the views of appropriate NAC member agencies, particularly the Department of Commerce, or from the entire NAC, of which the Department of Commerce is a member, where Eximbank has a direct financing relationship with the foreign buyer.

3. What firm assurance does the Export-Import Bank have when a tuna vessel, owned by a foreign subsidiary of a U.S. corporation flying under a foreign flag, has not and will not violate the International Tuna Convention to which the United States is a party?

When Eximbank is financing the export sale of the tuna boat through its direct credit program and has privity with the purchaser of a tuna vessel, it can provide, directly in its loan contract, specific conditions relating to the violation of any law or treaty by the purchaser of the vessel. If the purchaser does violate a law or treaty specified in the contract, it would become an event of default and Eximbank would have the right to accelerate the loan and if necessary enforce the contract in the courts. Knowledge of such violation may come from any one of numerous sources, including other tuna fishermen or the Departments of Commerce or State or Treasury. However, such a default would not come to our attention as rapidly as a default in payment.

The Bank would not have recourse to a domestic parent if the tuna vessel were purchased by a foreign subsidiary unless the domestic parent was a direct party to the transaction.

4. What are the tax implications by allowing the Export-Import Bank to facilitate the economic activities of a foreign subsidiary of a United States corporation? Do the American people and taxpayers gain or lose when we know that foreign subsidiaries of U.S. corporations don't have to pay taxes on profits earned until they are repatriated back to the United States?

This question can be answered more technically by the Department of the Treasury. However, it is our belief that, in the long run, the American people and taxpayers gain from the income generated by foreign subsidiaries of U.S. corporations. Moreover, benefits accrue to the entire U.S. economy from export sales, whether to foreign subsidiaries of U.S. firms or to foreign-owned firms, in the form of increased U.S. jobs, corporate income, and tax revenues to all levels of government.

5. Is it not true that the taxpayers in effect support the Export-Import Bank and in effect are the ones who bear the burden of the Export-Import Bank's interest rate to facilitate the lending activities of the Bank even to foreign subsidiaries of U.S. parents?

Eximbank does not finance its operations with appropriated funds. The Bank raises its funds through borrowings primarily in the private market. Taxpayers thus do not, either in actuality or in effect, support the Export-Import Bank or bear the burden of the Export-Import interest rate. To the contrary, having been authorized and empowered by Congress to do a general banking business, Eximbank has effectively facilitated U.S. exports since 1934, and in so doing has earned profits totaling almost \$2.3 billion. From these profits, Eximbank has returned dividends to the U.S. Treasury totaling \$806 million (through June 30, 1972) on its initial investment of \$1 billion in Eximbank's capital stock.

Taxpayers do, however, benefit from Eximbank's effective support of U.S. exports. They benefit from the increased earnings power created by the sale of U.S. products abroad, from the tax revenues generated on profits of U.S. exports, and from lower unit costs made possible by economies involved in higher production levels to serve both domestic and foreign markets.

On the issue of employment, it is sufficient to note that every \$1 billion in export sales supported by Eximbank in turn supports 70,000 American jobs.



6. Can there be proper coordination at all times between Eximbank and other agencies such as the Departments of State and Commerce in export transaction such as tuna boats?

Eximbank believes that presently there is proper coordination with the other departments and agencies of the Government through the day-to-day, informal communications and the weekly formal communications through the NAC as described earlier. The Bank believes that it has responded fully and effectively to requests for policy coordination from other interested U.S. Government agencies and it fully intends to continue responding to such requests.

7. Should Eximbank support purchases by foreign subsidiaries of U.S. corporations?

Eximbank believes it is appropriate to exercise its authority to support exports to foreign subsidiaries of U.S. firms for two major reasons. First, the existence of a U.S. equity interest in a foreign subsidiary has very little influence on the decisions of that subsidiary concerning purchases of plant equipment and parts. Equipment, materials, and parts required to build and operate a foreign subsidiary can be purchased in most of the developed countries of the world. Because there is no *a priori* reason for profit maximizing subsidiaries to purchase U.S. products, Eximbank support serves as an essential inducement to U.S. procurement. Without Eximbank support, the subsidiary might well purchase its equipment from other countries which do offer export financing.

Second, Eximbank can perceive of no justification for adopting a policy of discriminating against foreign subsidiaries by refusing to support, when necessary, their purchases of U.S. goods. It is clear, however, that such discrimination could produce the following adverse results. It could:

reduce the overall competitiveness of the foreign subsidiary by forcing it to pay higher financing costs than its foreign competitors for U.S. procurement. Reduced competitiveness and diminished profitability could require additional investment by the U.S. parent corporation, thereby aggravating our imbalance of payments.

prompt foreign subsidiaries to shift their procurement from the U.S. to other major competing trading nations whose exports are supported by government-related financing services. The U.S. faces exceptionally keen government-supported competition from exporters in the United Kingdom, France, Germany, Italy, and Japan.

The Bank does not believe that such support has the effect of reducing employment in the United States. To the contrary, there is ample evidence to indicate that employment is actually increased by sales of U.S. goods and services to foreign purchasers, whether to foreign subsidiaries of U.S. companies or to foreign-owned companies.

Mr. DINGELL. The Chair is going to recognize Mr. Everett at this time, gentlemen, who has some questions. Hopefully we will get to the heart of this matter.

Do you have any further comments as to the number of loans made? Does that cover the number of loans, guarantees and insurance actions taken by the Bank?

Mr. BOSTWICK. Mr. Chairman, I have given you orally a complete record of approvals.

Now, as we talked with Mr. Stockton yesterday, we did get into some denials.

Mr. DINGELL. All right, do you have denials, or other loan applications or guarantees from insurance actions pending?

Mr. BOSTWICK. Well, once it is denied, it is no longer pending, Mr. Chairman.

Mr. DINGELL. Well, do you have applications pending, or denials?

Mr. BOSTWICK. We have no applications pending that I am aware of.

Mr. DINGELL. None pending, or denials?

Mr. BOSTWICK. There is a question on the Senegal action. That has not been finalized.

We are talking about a preliminary commitment, and for the record I want to correct my earlier remarks. The transaction involving Senegal, if it were to be concluded, would involve a direct loan and a financial guarantee.

But at the moment we are engaged only in the preparation of what we call a preliminary commitment on the case. There is no assurance that the preliminary commitment will be used.

Now, yes, there have been some denials. I was discussing with the committee the application received from the Bank of America for a bank guarantee involving the *Atlantis*; that application was denied by the Board on October 24, 1972.

We received an application from Chase Manhattan Bank for a preliminary commitment for the financing of the *Atlantis*; that was was denied on November 29, 1972.

However, as I mentioned earlier, the Board did approve an advance commitment for a discount loan to the Chase Manhattan International Banking, Corp., on February 6, 1973. As I stated earlier, the financed portion on that transaction was \$2.8 million.

We received applications again from Chase Manhattan International Banking Corp.—you will note our dealings here are with a commercial bank, not with the exporter or the buyer—

Mr. DINGELL. Is it fair to say that you are giving submissions from the bank? You are not getting privileged information between that bank and the exporter, are you?

Mr. BOSTWICK. We got privileged information on the applications for a preliminary commitment, and on the insurance and bank guarantee cases, yes, but not on the discount loan applications.

The difference, Mr. Chairman, is this: Who is the obligor? When we make an advance commitment for a discount loan we are looking to the creditworthiness of the commercial bank, not the underlying transaction. Our concern with such a case is only the creditworthiness of the commercial bank.

If we lend directly to an overseas buyer, or where we guarantee or insure the loan of somebody else, a commercial bank, for example, to the overseas buyer, then it is necessary for us to understand the financial capability of that overseas buyer, because we are, in effect, assuring the lender that he is going to be repaid.

It is incumbent upon us—in fact Congress requires us—to find reasonable assurance of repayment. You can only find that if you have good, accurate financial information, and we feel very strongly that we cannot jeopardize our ability to obtain that kind of confidential information.

Mr. DINGELL. How is the Congress to know that you are carrying forward your function in that particular if we do not have access to that particular information.

Mr. BOSTWICK. We have the GAO.

Mr. DINGELL. I am not asking about the GAO.

Mr. BOSTWICK. That is an arm of the Congress, Mr. Chairman.

Mr. DINGELL. Well, this chairman uses them from time to time, as the need arises, and I have no doubt you will be receiving a call from them in due course in this matter.

You know, I do not intend to sit here as the subcommittee chairman lightly and ask for information from you good folks down there and have you snap your fingers in the face of my staff members, and of the subcommittee staff, and you better understand that hard fact. You are not going to do that to this subcommittee chairman.

Having established that in your mind rather clearly, I am now going to recognize Mr. Everett.

Mr. EVERETT. Thank you, Mr. Chairman.

Do I understand, Mr. Bostwick, that the application for the three vessels have been denied?

Mr. BOSTWICK. May I clarify this?

We had, in effect, two applications. Let us call this two sets of applications. One set of applications was received from the Chase Manhattan International Banking Corp. for an FCIA insurance policy.

Mr. DINGELL. Which one was that? Is that the *Atlantis* or the *Mariner*?

Mr. BOSTWICK. The application which was received covered the *Mariner II*, the *Captain Scott Shannon*, and *Sea Treasure*.

The application was received in Los Angeles by the Foreign Credit Insurance Association branch office approximately on March 26. The application was received in New York by FCIA on April 2 of this year, by Export-Import Bank on April 9, and our Board denied the case on May 9, 1973.

There was another set of applications from Chase Manhattan International Banking Corp. for a discount loan covering notes that they say they would acquire in the sale for export of each of those three vessels. Those applications for discount loans were denied by the Board on May 9, 1973, a week ago today.

Mr. EVERETT. Can you tell the committee why they were denied?

Mr. BOSTWICK. No, I really cannot, on the basis that it is difficult to understand why a Board member would vote the way he did.

I certainly would be happy to tell the committee some of the considerations that were discussed in the case. We certainly treated the issue as to whether or not sales of this kind would frustrate the State Department in other efforts on their negotiations involving the 200-mile limit problem in some Latin American countries.

We certainly were aware of some of the provisions of the Inter-American Tropical Tuna Commission.

There was in this transaction the question of a parent-subsidiary relationship.

There was the question of the essentiality of Export-Import Bank participation, which certainly will be a point that we will discuss in greater detail as we answer for the record Mrs. Sullivan's questions.

In short, there is the entire question of the creditworthiness, the reasonable assurance of repayment, on the transactions.

These are all considerations that must be treated.

Of course, we are required by our law, as Mrs. Sullivan mentioned earlier, to ascertain that there is no adverse effect on the domestic economy from any of our loans.



Mr. DINGELL. Was that question on the adverse impact on the domestic economy discussed?

Mr. BOSTWICK. I believe it was discussed in the sense that we felt there would be none.

Mr. DINGELL. Now, I am not clear on Export-Import Bank's actions, but as I understand it, you informed the individual his application had been rejected.

Do you inform him as to why?

Mr. BOSTWICK. No, we do not, Mr. Chairman.

Our General Counsel reminded me this noon that in the minutes of the Board of Directors meetings there is a reason given, and on this case the reason is contrary to national policy.

Mr. DINGELL. Very broad reason.

Mr. BOSTWICK. That is right, a very broad reason.

Mr. DINGELL. Well, can you inform me then what factors changed between May 9 when you turned down the three, and the February 5, for approval of the *Atlantis*?

The applicant was the same, was it not?

Mr. BOSTWICK. Yes, and I can now only answer you in this way: as I pointed out to you, the Bank's Board was unwilling to support the guarantee or to lend directly to the borrower on any transaction involving the *Atlantis*.

Mr. DINGELL. They were unwilling to?

Mr. BOSTWICK. Yes.

Mr. DINGELL. They did so?

Mr. BOSTWICK. They did not, sir.

Then the question came up in February as to whether or not we would make an advance commitment to the Chase Bank, which was willing to take the financing of the transaction on its own risk. We concluded at that time that if the Chase Bank was willing to accept the risk of the export transaction, we would provide them assurance of a backup of liquidity so that in the event that at any time during the outstanding term of their obligation from the importer, which they hold, they need liquidity, they can come in and at that time borrow the money from us.

Now, no actual loan has been made, Mr. Chairman. Let me make that very clear. No loan has been made. We have given them an advance commitment, though, that assures them that if they want to borrow from us an amount equal to the indebtedness that they hold, they can come in and make such a request.

Mr. DINGELL. That is the discount loan?

Mr. BOSTWICK. Right.

Mr. DINGELL. Now, is that a loan which you folks would pick up if it were in default?

Mr. BOSTWICK. No, we would not.

Mr. DINGELL. You would not?

Mr. BOSTWICK. No, sir.

Mr. DINGELL. Suppose you picked it up, and then it went into default?

Mr. BOSTWICK. In the event we disburse to Chase Manhattan, we will receive from Chase the unconditional obligation of Chase to repay our loan to Chase.

Now, we do it on the basis of the underlying obligation which is the promissory note that they buy from the exporter, but repayment of our loan to Chase has nothing to do with whether or not the export loan is ever paid.

Mr. DINGELL. So you are not in the position of guarantor to Chase.

Mr. BOSTWICK. No, sir.

Mr. DINGELL. Why would you not do the same thing with regard to Chase on the other vessels?

Let us take the *Atlantis*, why would you accept *Atlantis* under these conditions, and turn down the *Mariner*?

Mr. BOSTWICK. Let us go back to an earlier statement that I made, whether the clearance procedure meets the satisfaction of the committee.

Mr. DINGELL. It does not?

Mr. BOSTWICK. We do believe that on October 12, 1972 we had some understanding that there was no problem with the Department of Commerce when we were entertaining the request for financing of the *Atlantis*.

Mr. DINGELL. Well, what changed that? Did you all of a sudden find there was a problem with the Department of Commerce, with Maritime?

Mr. BOSTWICK. No, I do not believe we did. There were other considerations where the board felt that it did not want to participate in the transaction.

Mr. DINGELL. What were they?

Mr. BOSTWICK. I gave the considerations that were before the board.

Mr. DINGELL. Did you give us those problems with regard to the *Mariner*?

Mr. BOSTWICK. I am sorry, I cannot hear you.

Mr. DINGELL. Did you give us the problems you had with this particular application pertaining to the *Mariner*?

Mr. BOSTWICK. Yes, I did. It is *Mariner II*.

Mr. POTTER. If the Chairman will yield, Mr. Bostwick, I believe there are five boats involved.

There are the three that you talked about, the *Mariner II*, *Captain Scott Shannon*, and *Sea Treasurer*. That is one set, and I think we understand the reason that you did not accept that.

There are, however, two other boats. One is the *Atlantis*, and one is the *Mariner*, not *Mariner II*, and my understanding is that an application was made identical to that of the *Atlantis* for *Mariner*, and the *Atlantis* was accepted, and the *Mariner* was not.

Are my facts wrong, or is there a difference?

Mr. BOSTWICK. My records do not support your statement. I am not prepared to say your statements are wrong.

No. Our records show, as I stated, that we were asked for a bank guarantee for *Atlantis* and then a preliminary commitment for *Atlantis*, both of which were denied, and an advance commitment for a discount loan for *Atlantis*, which was approved.

We have no record of any applications involving *Mariner*, unless *Mariner II* and *Mariner* are the same boats, but I would doubt it,

inasmuch as the information supplied to us would lead us to believe that *Mariner II* was still under construction, has not been delivered, and probably will not be delivered until August, I believe, or this year.

Mr. POTTER. I think Mr. Lewis is here, and I am sure we can get what is obviously a very murky situation clarified when he gets a chance to tell us what is going on.

Mr. DINGELL. This is the reason we would like to have a chance to look at your files, rather than try to ponder through these rather difficult questions.

Mr. Everett?

Mr. EVERETT. Thank you, Mr. Chairman.

Mr. Bostwick, you made a statement that you did not want to frustrate the U.S. efforts on the 200-mile limit as one of the considerations for turning down the loan.

Mr. BOSTWICK. That was one of the considerations.

Mr. EVERETT. How about the other Federal laws that might come into play other than the 200 mile fishing zone limit.

Do you try to abide by other Federal laws to make sure they are not going to be circumvented?

Mr. BOSTWICK. Well, to the extent that we have knowledge of them, and we attempt to gain, informally, the views of other agencies. I might say that on major transactions of consequence we always consult with the Department of State, and we operate within the policy framework of the National Advisory Council on International Monetary and Financial Policies, which is chaired by the Secretary of the Treasury and consists of the Secretary of State, the Secretary of Commerce, the Chairman of the Federal Reserve Board and the Chairman of our Bank. There is a post-audit of our loans by that group in some instances, and there is a pre-audit in others.

We do believe that our actions are consistent with our overall national policy, and there are these NAC audits, as well as the GAO audits, which we believe should give the Congress assurance that we are acting prudently and appropriately.

Mr. EVERETT. Mr. Bostwick, would you have any authority for attaching a condition to a loan that the vessel in this case would abide by all Federal laws?

Have you ever done this in advance? Do you have the authority, or just what do you think about that situation?

Mr. CORETTE. Mr. Everett, let me take that question, if I may.

We have the authority to impose any regulations as conditions of any direct loan, or conditions of the issuance of any insurance or guarantee.

Now, the Chairman referred earlier to the Senegal transaction, which would be a direct loan. In such a case, we would set forth in our credit agreements those conditions which we feel are necessary to comply with U.S. law and to assure us that we will be repaid on the loan, and if those conditions are not met or we are not repaid, we have access to the courts to collect.

Mr. EVERETT. You do have this authority with discount loans?

Mr. CORETTE. I cannot hear you, sir.



Mr. EVERETT. Do you have that authority with discount loans?

Mr. CORETTE. With discount loans all we are looking at is a loan to a commercial bank.

Mr. EVERETT. Right.

Mr. CORETTE. And if the commercial bank defaults on the loan, obviously we have access to the courts to collect from the commercial bank.

Mr. EVERETT. But you do not have authority to attach conditions to the loans that go to the commercial bank for the same type of financing that you would have for direct financing.

Mr. CORETTE. I think it would be difficult to impose that type of condition, but you do not have to approve the discount loan.

Mr. EVERETT. That is right.

I just wonder if it would be helpful if you were given that authority, in case you do not have it.

Do you see any merit to being able to attach that commitment?

Mr. BOSTWICK. We have that authority, but it boils down to the practicality of the case. We are not looking specifically at the underlying obligations on the transaction; we are looking at the creditworthiness of the commercial bank, and the fact that it made an export loan.

The whole program is designed, Mr. Everett, to keep commercial banks in the export lending business. This is very important to expansion of U.S. exports.

About 95 percent of the total U.S. exports are financed, as you know. Export-Import Bank participates in only 7 percent of the total exports from this country. There is this vast spread of difference between what Export-Import Bank does and what the totality of the U.S. banking system does, and everything we can do to encourage that spread to get even larger is, I think, in the national interest.

There is no reason why the Government should become involved in every transaction, and it is not.

It comes to a point of how many restrictions do you want to put on the commercial bank in its export lending practices when they do it at their own risk. If they are doing it at our risk, when we insure or guarantee the transaction, then the things that you suggest are entirely appropriate.

Mr. DINGELL. Does it make any difference as to your responsibility to maintain national policy as between those things that you guarantee, or where you make direct loans, or where you simply discount a bank loan?

Mr. BOSTWICK. I think there is a tendency to make that difference.

On the other hand, as Mr. Corette said, when you look at the original application—do not forget that this application must have come in prior to the time that the transaction takes place—you can view the circumstances and decide at that time whether or not you want to give this assurance of liquidity for some time in the future on that particular application, and the Board has the right to deny such an application.

Mr. EVERETT. Well, let me ask you two questions, the first of which is, do you regard the treaty obligations of this country with regard

to yellowfin tuna, and so forth, as being important enough that you should try to see to it that not only our own nationals, but other nationals of other countries who are going to derive benefits should adhere to this?

Mr. BOSTWICK. Yes.

Mr. EVERETT. In other words, do you think you ought to set up nationals of other countries to fish in waters that we do not allow our own people to fish in because of our treaty obligations?

Mr. BOSTWICK. No, I do not.

Mr. EVERETT. The second question then is, what do you view your responsibility to be with regard to protecting the American fishing industry from unfair foreign competition, not referring now to any treaty responsibilities this nation might assume?

Mr. BOSTWICK. Well, we certainly must look at the problem, as you term it, of unfair foreign competition.

Mr. EVERETT. Other countries can fish in areas that we close for conservation reasons. I regard that as unfair competition.

Mr. BOSTWICK. I share your view.

Mr. EVERETT. Now, is that a criterion established that is before the Bank in its considerations of its guarantees or discount, or insurance loans?

Mr. BOSTWICK. As I stated earlier, it certainly is a consideration.

Mr. EVERETT. All right, then let me ask you this question.

What steps then to see to it that those policies are carried out do you utilize to achieve coordination with the National Oceanic and Atmospheric Agency, with the State Department regarding treaty obligations and things of this kind, and with regard to the Maritime Administration?

Mr. BOSTWICK. These coordination procedures necessarily must take place prior to the Board action.

Mr. EVERETT. I am asking what they are.

Mr. BOSTWICK. Before the Board takes action on the transaction.

Mr. EVERETT. What are the coordination procedures?

Mr. BOSTWICK. Sorry, I am having trouble hearing you.

Mr. EVERETT. Suppose we address ourselves to what these coordination procedures are?

Mr. BOSTWICK. The loan officer involved with these transactions is required to undertake such coordination as he has been directed to, or he feels is appropriate.

Mr. EVERETT. Do you have instructions to your loan officers that they should make this coordination?

Mr. BOSTWICK. Not in written form.

I think, though, that the proof that the system works pretty well is that it was a loan officer who, in these cases, uncovered the responsibility, and the desirability, as far as our Bank was concerned, for talking with NOAA on these matters, and he did.

Mr. EVERETT. Well, you stood on *Atlantis*, did you not?

Mr. BOSTWICK. I disagree. We did talk with the Department of Commerce, and we had what we considered to be the Department of Commerce approval on this transaction. Approval of the transaction occurred sometime before any alleged violation occurred.

Mr. EVERETT. Do you not have other statutory responsibilities where you have formal coordinating procedures within your Agency with other agencies of Government, for example, the State Department, with regard to loans behind the Iron Curtain, or clearance with the Department of Defense with regard to loans of material that might have some kind of defense sensitivity?

Mr. BOSTWICK. No, sir, there is no statutory requirement—

Mr. EVERETT. Do you not have a formal procedure?

Mr. BOSTWICK. May I finish my sentences, please?

Mr. EVERETT. Sure.

Mr. BOSTWICK. There is no statutory requirement for a coordination procedure, other than the establishment of the National Advisory Council on International Monetary and Financial Policies by the Bretton Woods Agreements Act of 1945.

Mr. EVERETT. That is not my question. That is a good answer, but it is the wrong one.

The question I was asking is, do you not have some formal procedures?

Mr. BOSTWICK. Yes, we do. You asked about statutory requirements, and I thought I was answering your question.

There is no statutory requirement that we consult with the Defense Department on military lending. The fact of the matter is we do; not only with the Department of Defense, but with the Departments of State and Treasury on military lending. Also, military loans have to be approved by the NAC on a preaudit basis.

There is complete and good coordination among these agencies for those kinds of transactions.

Mr. EVERETT. Mr. Bostwick, once you attach these conditions to one of these loans, how do you enforce it?

Mr. BOSTWICK. Well, it is a very difficult thing to do, because let us remember, if we may, that Export-Import Bank approves about 5,000 transactions per year. In last fiscal year the figure was somewhere around 5,400, as I recall, and I would be happy to provide the average figure for the record, if you wish.

We probably need more coordination on this finding problem, and I think that the committee is serving a very useful purpose by this inquiry, I am sure that you can understand why we are going to be paying more attention to it in the future, not that we did not in the past, but more attention in the future.

The policing of 5,000 transactions a year is a little difficult for us to do.

For example, we will finance \$250 worth of diaper pins, as well as \$360 million for an LNG project. The committee understands that we pay a little more attention to the policing of the \$360 million project than the \$250 diaper pins transaction.

Mr. CORETTE. I think an answer to that question is that the typical type of default that we see is a default in payment. That can come to your attention pretty rapidly, either directly from your own treasurer's office when the payment has not been made on a direct loan, or from the exporter or the commercial bank when the payment has not been made to them.



I think that to police the more technical type of default clause referred to earlier is more difficult. Even if you know that it has occurred, it is difficult to have sufficient evidence which would warrant taking a fairly drastic action of either calling the entire loan, which is the most drastic, or slapping them on the hand in some other way.

The real drastic action is to call the entire loan for that kind of a default, and getting proof sufficient to take that kind of action, I think, is more difficult to obtain than in the typical type of default that we see in the banking business.

Mr. POTTER. If you will yield, Mr. Everett.

Mr. EVERETT. I yield.

Mr. POTTER. What troubles me about this, though, Mr. Corette, is the dilemma that it seems we are in perhaps inevitably because of the circumstances and the dilemma is this.

You lend money to an agency which says we are going to do X with this, and they turn around and do Y with it, you are essentially helpless.

You can say we are not going to give you any money any more.

You can maybe call the loan in on default if you hear about it, and this presumes your communications with your sister agencies are better than I suspect they are, or you can try to work out some intermediate arrangement, and I just do not see that you really have the personnel to monitor what is going on in your office, or more acutely, the mission to do it.

I think that this is probably the nub of what is troubling the committee today.

You have been asked to grant money, and you have, in fact, made commitments to grant money to finance operations which could conceivably be used to directly violate a treaty which you are a party to.

I do not wish to impugn any evil motives on the part of the Senegalese, but these ships I would assume are oceangoing ships, and I do not know what the tuna situation is around Senegal, but we know what it is like in the Central Pacific, and if those ships appeared suddenly on the seas right in the middle of the restricted area, doing their thing, are we helpless? Is that what you are telling us?

Mr. BOSTWICK. You would have a diplomatic problem.

Mr. POTTER. We have diplomatic problems with the Department of State at every level.

More than that, I am assuming we are not going to send out the gunboats to blow them out of the water, but more than that, what can we do?

Can you, in fact, ask for additional authority to require that loans that you insure or grant will not be used in controvention of treaties to which we are a party?

Mr. DINGELL. Absent a condition which you impose on the loan, there is no way you can stop these vessels from going out and fishing right smack in the middle of a closed area or in the middle of a closed season, is there?

Mr. BOSTWICK. That is correct.

Mr. DINGELL. How are you going to prevent that? Have you given consideration to clearance with the State Department and with NOAA to ascertain whether or not you should put these kind of conditions in the loan?

You are saying on faith you have done pretty good so far. I am not really satisfied you have, but in any event I am not satisfied that you have the mechanism to do it. I do not think you have established to me that you have the mechanism.

How are you going to stop these people going out in a closed area, the Senagalese?

You do not have conditions of this kind imposed in an agreement, do you?

Mr. BOSTWICK. In the first place, we have no agreement.

Mr. DINGELL. Do you have any mechanism to find out what State and NOAA and Marad say on this matter, the internal mechanisms?

Mr. BOSTWICK. Well, I think that if we had the opportunity to sit and discuss how it actually works in practice, your confidence level would go up quite a bit.

On the Senegalese case, there was a formal discussion with the Department of State. Currently the Department of State, Department of Commerce, Department of Treasury, and the Federal Reserve Board are being asked their opinions on the case on a formal basis. So in practice, sir, it does work out. This is formal, too. We will have a response from the NAC in writing on this one, Mr. Dingell.

Our coordination procedures, I think, work very well, particularly on the major cases.

Mr. DINGELL. That is an opinion. I value your opinion, but you do not show me anything concrete.

Mr. Everett?

Mr. EVERETT. Mr. Chairman, in the interest of time, we will submit more questions to you in writing, Mr. Bostwick, at a later date.

I have no more questions at this time.

Mr. DINGELL. Mrs. Sullivan?

Mrs. SULLIVAN. The only thing I would like to add to this is if we have to, as a committee, spell out what coordination means between the State Department and Commerce, Marad and you and all those involved as to what these people are going to do, the information you are going to have to know and obtain from these various agencies, we will do it.

I think that is what needs to be done, because I have heard for months about all of this coordination, not with Ex-Im Bank, but with other things, where all of these agencies are supposed to coordinate, and everybody is too busy to get to the other one, and does their thing without the proper interweaving of the information that is necessary to make a yes or no decision.

I think with all of the types of loans that Ex-Im Bank does make, to various countries, there are some that I think need some specific lines drawn of what this borrower can do, and cannot do, and in this case, if you loan money, I do not care if it is an American citizen or to whom, to operate in the areas where our own flag

ships operate, and yet are not subjected to the same regulations, then something is wrong somewhere, and in some way we have to stop it.

Mr. BOSTWICK. Let us try to come up with a common understanding Mrs. Sullivan.

Mrs. SULLIVAN. I am sorry, I cannot hear you.

Mr. BOSTWICK. I say let us try to work together to come up with what you think would be appropriate in the tuna situation.

Mrs. SULLIVAN. I think you are right.

Just coming up here and talking with us, we can find some way to solve it.

Mr. BOSTWICK. Of course.

Mrs. SULLIVAN. But it came upon us all of a sudden, and I think that in some way it has to be corrected.

Mr. BOSTWICK. Well, it came up on us rather suddenly, I might add.

Mrs. SULLIVAN. Well, I blame Marad also. If they are supposed to coordinate all of this with you, Marad has done a lot of funny things in this past decade we would like to inquire about.

Mr. BOSTWICK. I cannot share your view.

Mr. DINGELL. Do you have the criterion that you would propose for an American foreign subsidiary utilizing your financing mechanisms, to essentially go into business abroad?

Do you treat that kind of transaction differently, or establish any special criterion with regard to that kind of transaction than you would with a foreign company?

Mr. BOSTWICK. No, sir, there is no separate criterion on sales to foreign subsidiaries of American corporations which would discriminate between them and another foreign buyer.

I think an American corporation operating overseas has every right to be treated as an equal to their competition in that same area market.

The Department of Commerce studies have shown that a multinational corporation headquartered in the United States with its overseas subsidiaries contributes significantly to the volume of U.S. export trade, so we find that that actually helps the U.S. exports. It does not deter U.S. exports.

We are required by our legislation in all cases, not just subsidiaries abroad of American corporations, but the wholly-owned foreign operation, to view our participation in the export in terms of its influence and effect on the national economy. The so-called Holland amendment was triggered, as I am told, by a desire to make a certain that the Export-Import Bank took into consideration the effect on the domestic production of phosphate before supporting phosphate production overseas.

We must, by law, apply those considerations to every transaction, and I can assure you that we do.

Mr. DINGELL. Any further questions?

Well, gentlemen, we thank you for your statement.

These additional questions will be in the mail to you in due course, and you will submit us full justification for your withholding the files requested by the committee.

Mr. BOSTWICK. Yes, we will, Mr. Chairman.



I reiterate our desire to cooperate with you and to see that you will get the information. We will cooperate, and see that you get what you need to make good decisions and solve some of the problems that the chairman and Mrs. Sullivan have identified here today.

We can work with you on these and achieve your objective, and still not violate the confidence of those that submit information to us.

Mr. DINGELL. I would like you to set forth with great clarity how you may withhold information in your files from this committee.

If you cannot, you can look forward to further action by the committee.

[The information follows:]

#### STATEMENT ON FINANCIAL SUPPORT FOR EXPORT SALES OF TUNA VESSELS

The Export-Import Bank regrets the misunderstanding which occurred between members of its staff and the Subcommittee on Fisheries and Wildlife Conservation and the Environment, House Committee on Merchant Marine and Fisheries, with respect to a review of the Bank's files on certain cases involving Bank financing support for export sales of tuna vessels.

The Export-Import Bank does not have any specific statutory authority for withholding from review by Congress, under appropriate conditions, materials originated by the Bank or submitted to it in connection with its activities other than the general authorities applicable to all Federal agencies. Eximbank has established procedures under which information submitted to the Bank on a confidential basis, and which the Bank determines is exempt from public disclosure pursuant to 5 U.S.C. 552(b) (4), may be reviewed, as required, by other U.S. Government agencies, including the Congress. The Bank in fact has provided such information, under these procedures, to the Congress when requested in several instances.

Eximbank wishes to reiterate its desire to cooperate fully with this Committee in an effort to provide any information which might be helpful to the Committee in its study of the subject question. In this connection, we wish to note that after clarification of the original misunderstanding, a member of the Chairman's staff visited the Bank and under the procedures noted above was provided and did review the information requested.

Mr. DINGELL. Our next witness is Mr. Edwin F. Lewis, President, Westgate California Food, Inc.

#### STATEMENT OF EDWIN F. LEWIS, PRESIDENT, WESTGATE CALIFORNIA FOODS, INC.

Mr. LEWIS. I do not have a prepared statement, and frankly, after listening to the testimony and prepared statements here, I am glad I did not prepare one, because I would like to make some comments about this whole situation, which I hope will enlighten this committee, and I hope will further the conservation activities of the U.S. Government as far as tuna is concerned.

Mr. DINGELL. You may consider yourself recognized for that purpose.

Mr. LEWIS. There has been a great deal of concern expressed today about the exporting of American tuna vessels to foreign flags.

I have heard nothing about the foreign vessels that are operating in the restricted areas that are owned and are controlled by American interests who are my competitors in many cases, who can afford to have foreign vessels built without the Export-Import Bank help. Exported vessels are not the problem.

The foreign owned vessels are the problem. There is fish coming from Ecuador, fish coming from Peru. That fish is caught in the restricted area.

The tuna fish business is a business that this year will exceed a half million dollars. It is one of the first 10 selling items in the supermarket in the United States. It is a great economical product, a convenient product, and it is a nutritious product, and it is a highly competitive business.

I am competing with two giant \$1 billion corporations, who control approximately 55 to 60 percent of this business. We control about 10 percent, and when I say "we" I mean the Westgate California Foods Division.

About 3 months ago I initiated activity to acquire a wholly owned group of corporations that own one of the largest and most efficient tuna vessel fleets in the world today.

When those vessels were acquired, one of those vessels was slated for export, in fact, had been approved for export at that time to the Netherlands Antilles. Three other vessels that were incomplete were also slated for export, and I should clarify for your committee that there are only four vessels involved, there are not five.

Quite frankly, the economics of this business make it pretty difficult for us to compete with competitors if they are buying tuna that they should not be able to secure at \$477 a ton, and we have to pay \$690 to \$750 a ton to import the same tuna. We are at a disadvantage.

Mr. DINGELL. Would you want to set forth the basis for that statement?

Mr. LEWIS. Yes. Actually, tuna delivered off of American vessels, or out of the Eastern Tropical Pacific is selling right now, yellowfin tuna we are talking about, is selling for \$477 a ton.

If you wish to buy that comparable type of tuna from Japan or Taiwan or Korea, or Africa, you are going to pay \$690 to \$750 a ton for that tuna, and that is a distinct disadvantage to a company that is competing with somebody who, in fact, is getting away with fishing in the restricted area.

The Westgate California Foods Division, which has operated a fleet of boats for a long time, a great number of years, has probably cooperated more fully with NOAA and the National Marine Fisheries Service than any other fleet of boats in existence in the world today, and we intend to continue to do so.

I signed a piece of paper last week with Dr. White, and I quite frankly would not have signed that piece of paper, committing a boat that I had already exported which could fish legally in the unrestricted area since the Netherlands Antilles are not a signer to the IATTC, because I was informed that your committee was meeting, and that you were really going to put some teeth in the enforcement elements of this whole fishing business so that the people that are getting tuna out of the area that is not available to the American fisherman would be stopped from doing so.

I applaud you, and I sincerely hope that you do it.

Mr. DINGELL. Let me make this clear to you.

It is the intention of this committee to be fair. If there are abuses here which involve any American interests, yours or anybody else's, if you bring it to our attention, we will see to it that they are corrected.

This committee actively seeks your assistance to see to it that that step is taken, by pressure on the executive, or statutory enactments.

Mr. LEWIS. I think the compliance of the other nations who control boats, regardless of who owns or controls them, if they are flying a foreign flag, that those boats comply with the same provisions that the American tuna boats comply with, and the *Mariner* and the *Atlantis* are going to comply with.

Mr. DINGELL. We will pursue these matters further. You may proceed.

Mr. LEWIS. I am sorry. I am going to be a little disjointed, because I made notes here as various and sundry people made comments.

I should mention that, to my knowledge, there was no mention of the Panamanian group of boats that are in violation of the Inter-Tropical Tuna Convention, that may have been, in your notes, but if it was, it is not in mine.

Mr. Royal from the labor union in San Pedro felt that the letter I signed was a weak document. I do not think it is a weak document.

Actually, in a way I have committed myself to being discriminated against, because I do not have the protection of the State Department payment for either of those two vessels, should they, by a navigational error, wander into Ecuadorian or Peruvian waters. I have no protection for the rebate of those fines.

I was well aware of it at the time I signed it, and it is an indication of our attitude to cooperate with you and your committee and NOAA on the true enforcement of the Inter-Tropical Tuna Convention and other conservation programs of this Government.

In talking about export vessels, I feel discriminated against. I came to Washington a week ago, and made an agreement that I thought would be applied to all future export of tuna vessels, and I get a copy of report No. 17, dated May 1973, from the Inter-American Tropical Tuna Commission, signed by a Mr. B. M. Chatwin, and it mentions that the U.S. class 6 seiner *Conquest* was exported to Mexico last week.

Mr. DINGELL. This is exported by the Export-Import Bank?

Mr. LEWIS. That I don't know; however, I believe that class of vessel is about a 600-ton seiner.

Captain Medina or Mr. Felando would probably answer that question for you.

It is 625 tons. I am here as a witness, a willing witness, but I do feel that the law ought to be equal, and treatment ought to be equal to all concerned, including my corporation.

I think that pretty well sums up what I have to say, Mr. Chairman, and I will be happy to answer any questions.

Mr. DINGELL. With regard to your last point you raise, Mr. Lewis, I assume the Exim Bank, or the Maritime Administration, or NOAA, or at least some governmental agency would impose these kind of conditions on vessels, is that what you are saying to us?



Mr. LEWIS. It is my understanding from talking to the people in NOAA, and my little knowledge of the Inter-Tropical Tuna Convention that these vessels under 400 tons are not a problem when it comes to export. It is vessels over 400 tons that NOAA takes a long look at, and here is a 625 ton vessel, and a week earlier I am held up on a boat that is ready to go to sea to pick up its net, loaded with American fishermen. We could have tied up for 6 months in litigation, had I not signed that contract.

I signed that piece of paper because of your committee meeting, and I am disturbed when I learn that the *Conquest*, a 625-ton vessel was exported to Mexico a week later.

Mr. DINGELL. Is our gentleman from Marad here who was here earlier?

Mr. Garske, did you impose any condition on that transfer, sir?

Mr. GARSKE. I have no information on that boat.

Mr. DINGELL. I would appreciate it if you will give us some information. We are getting right down here to the heart of the question.

Here we have a man who has been compelled to agree to certain conditions.

Now, it does not strike me that he should be forced to face different conditions than other exporters of other vessels.

He is entitled to be treated equally as well as anybody else. That is part of the thrust of this hearing.

Now, is there any conditions imposed on the transfer?

Mr. BRENNAN. The answer is no, Mr. Chairman. If I might explain it in a little more detail, the *Conquest* is a 650-tonner built in 1968, so it is not a brandnew vessel, and it was transferred to the Mexican flag. Mexico is not a problem country.

Mr. DINGELL. Is he not entitled to be treated like everybody else?

Mr. BRENNAN. Moreover, the transfer was some time before we signed this agreement, I believe.

Mr. DINGELL. I am not clear on whether we can retroactively impose new conditions on that particular transfer, but it does occur to me that you folks are going to have to be looking to the future with regard to some coordination between Marad, NOAA and our good friends at the Export-Import Bank.

Mr. BRENNAN. There was coordination in this case, Mr. Chairman.

Mr. DINGELL. I think Mr. Lewis would challenge that statement, and I frankly feel compelled to agree with him.

Mr. Potter has a comment here.

Mr. GARSKE. Excuse me, Mr. Chairman, I would like to say as far as the Maritime Administration is concerned, in matters of fishing boats, we discuss with NOAA, and depend on recommendations and advice from NOAA.

Mr. DINGELL. I think that is probably a correct position, although I think you should test it with further research.

Mr. McKERNAN. Mr. Chairman, I would like to say in this case Mexico is a member of the Commission, and is bound by the regula-

tions of the Commission, and one would presume that the sale of this boat would simply mean that the boat would be operated by Mexico as it would be as if it were under the U.S. flag.

That is quite different, Mr. Chairman, than the sale of a boat to the Netherlands Antilles, not a member of the Commission, not bound by the Commission regulations, and therefore, not bound by any of the restrictions required under Commission regulations.

Mr. DINGELL. I think you make a very good point. You are very well known to the committee, and just for the purpose of the record, you are Donald McKernan of the State Department.

Mr. LEWIS. I might respond to that, Mr. Chairman, by asking Mr. McKernan if that is the case then, why do the Canadians laugh at it? They are signers of the Convention, as well.

Mr. DINGELL. That is a very good question, and we will let Mr. McKernan answer it.

Mr. FELANDO. I do not agree with Mr. Brennan that Mexico is not a problem. I think Mexico is a very serious problem, and in 1968 and 1967 we provided information about violations.

You have heard from Mrs. Medina about the conversation that she had with her brother-in-law, and we have had considerable difficulty with Mexico.

Now, these two vessels, and there is also another vessel besides the *Conquest*, and we do not know of any information that Mexico has set up a system to see to it that this vessel which is over 400 tons will be operating during the closed season in compliance with the rules regarding the area, the closed area.

We do not have any information as to the system that they have devised for those vessels.

We also have information that we believe they have another vessel, a former U.S. seiner that they have classified as a 399 tonner, which we know was built and modified to have a tonnage of 510 tons.

We believe they did this so as to avoid and circumvent the regulations and thereby apply a special allocation to that vessel and to avoid the regulations regarding the open and closed season.

I disagree completely with Mr. Brennan as to his conclusion that Mexico is not a problem.

Mr. DINGELL. That is a very good point.

Mr. FELANDO. I am happy to provide additional information, not only about Mexico but there are other countries and I want to make clear that I also mentioned Panama.

Mr. DINGELL. Mr. Brennan, would you want to comment?

Mr. BRENNAN. I would be very happy to.

Mr. Chairman, I would like to receive the material that Mr. Felando has. We are very concerned that this be enforced fairly across the board.

Mr. DINGELL. Mr. Felando, will you submit to the committee this information and we will pass it on to Mr. Brennan?

Mr. FELANDO. Be happy to.

[The information follows:]

## FOREIGN TUNA PURSE SEINERS OF GREATER THAN 400 TONS CAPACITY THAT HAVE OPERATED IN THE IATTC REGULATORY AREA IN 1973

| Flag country and name of vessel                     | Carrying capacity short tons | Remarks                                                                           |
|-----------------------------------------------------|------------------------------|-----------------------------------------------------------------------------------|
| <b>Canada (member IATTC):</b>                       |                              |                                                                                   |
| 1. Atlantic Ocean Maid .....                        | 1,000                        | Operating from Panama.                                                            |
| 2. Atlantic Hawke .....                             | 1,000                        | Do.                                                                               |
| 3. Atlantic Paton .....                             | 1,000                        | Do.                                                                               |
| 4. Atlantic Gardiner .....                          | 1,000                        | Do.                                                                               |
| 5. Atlantic Jag .....                               | 1,000                        | In Tacoma, Wash., for repairs and modifications. Has not fished so far this year. |
| Total .....                                         | 5,000                        |                                                                                   |
| <b>France (applied for membership IATTC):</b>       |                              |                                                                                   |
| 6. Alaba .....                                      | 1,600                        | In mid-March 1973, left the Pacific for fishing in Atlantic.                      |
| 7. Guipuzkoa .....                                  | 1,200                        | Do.                                                                               |
| 8. Biscaya .....                                    | 900                          | Do.                                                                               |
| Total .....                                         | 3,300                        |                                                                                   |
| <b>Mexico (member IATTC):</b>                       |                              |                                                                                   |
| 9. Calmex .....                                     | 1,000                        | Operating under special hardship allocation from IATTC.                           |
| 10. Ciudad de Mexico .....                          | 510                          | Ex-U.S. Seiner.                                                                   |
| 11. Conquest (new name unknown) .....               | 620                          | Do.                                                                               |
| 12. Cuautemoc .....                                 | 660                          | Operating under special hardship allocation from IATTC.                           |
| 13. General A. L. Rodriguez .....                   | 660                          | Do.                                                                               |
| 14. Juan A. R. Sullivan .....                       | 660                          | Do.                                                                               |
| Total .....                                         | 4,110                        |                                                                                   |
| <b>Panama (member IATTC):</b>                       |                              |                                                                                   |
| 15. Vida .....                                      | 600                          | Jointly owned by U.S. citizen and Yugoslavia, ex-Yugoslav vessels.                |
| 16. Angela .....                                    | 660                          | Do.                                                                               |
| 17. Jasna .....                                     | 600                          | Do.                                                                               |
| 18. Eastern Star .....                              | 493                          | Owned by South Korea, ex-U.S. built seiner sold first to Australia then to Korea. |
| Total .....                                         | 2,225                        |                                                                                   |
| <b>Japan (member IATTC):</b> 19. Nippon Mauru ..... | 750                          | Operating from Panama.                                                            |
| <b>Netherlands (nonmember):</b>                     |                              |                                                                                   |
| 20. Atlantis .....                                  | 1,600                        |                                                                                   |
| 21. Mariner .....                                   | 1,600                        | Has not commenced fishing trip as of May 10, 1973.                                |
| Total .....                                         | 3,200                        |                                                                                   |
| <b>Spain (nonmember):</b>                           |                              |                                                                                   |
| 22. Sol de Ipanema .....                            | 1,500                        | Operating from Panama.                                                            |
| 23. Sol de Copa Cabana .....                        | 1,500                        | Do.                                                                               |
| 24. Augustin Primero .....                          | 1,200                        | In San Diego shipyard for repairs and modifications May 10, 1973.                 |
| 25. Costa de Marfil .....                           | 800                          | Operating from Panama.                                                            |
| 26. Garrido Primero .....                           | 425                          | Based in Ecuador.                                                                 |
| Total .....                                         | 4,425                        |                                                                                   |
| <b>Cuba:</b> 27. Jagua .....                        | 660                          | Believed operating from Ecuador.                                                  |
| Total 27 vessels .....                              | 22,988                       |                                                                                   |



DEVELOPMENT OF FOREIGN TUNA FISHING FLEETS IN THE EASTERN PACIFIC—TRANSFER OF FORMER U.S. FLAG TUNA VESSELS  
 RELATIONSHIP—1957-73  
 IATTC HISTORICAL DEVELOPMENT  
 MEXICAN TUNA FLEET 1957-73

| Year of acquisition | Name of vessel          |                   | Where built       | Type tuna gear | Tonnage capacity | Present status             |
|---------------------|-------------------------|-------------------|-------------------|----------------|------------------|----------------------------|
|                     | Present                 | Former            |                   |                |                  |                            |
| 1957                | Princessa               | American lady     | Ex-U.S. baitboat  | Sailer         | (182)            | Sunk—1970.                 |
| 1958                | St. Mary                | St. Mary          | do                | Baitboat       | (70)             | Sunk—1970.                 |
| 1958                | Santa Maria             | Elena             | do                | Seiner         | (140)            | Information unavailable.   |
| 1958                | San Geronimo            | American Venture  | Ex-U.S. seiner    | do             | 123              | Unknown.                   |
| 1959                | Santa Marina            | Sea Lion          | Ex-U.S. baitboat  | Baitboat       | 140              | 1. Operating.              |
| 1960                | Santa Isabel            | Charlene          | do                | Seiner         | 237              | 2. Operating.              |
| 1960                | Stella Maris            | Stella Maris      | Ex-U.S. seiner    | do             | 125              | Information unavailable.   |
| 1960                | San Juan                | New Sea Rover     | do                | do             | 155              | Do.                        |
| 1961                | Tesoro Del Mar          | Irene S.          | Ex-U.S. baitboat  | do             | 219              | 3. Operating.              |
| 1961                | San Pedro               | City of San Pedro | Ex-U.S. seiner    | do             | 125              | Information unavailable.   |
| 1962                | Emperadora Azteca       | Conte de Savoia   | Ex-U.S. baitboat  | do             | 329              | Sold to Venezuela in 1973. |
| 1963                |                         |                   |                   |                |                  |                            |
| 1964                |                         |                   |                   |                |                  |                            |
| 1965                |                         |                   |                   |                |                  |                            |
| 1966                |                         |                   |                   |                |                  |                            |
| 1967                | Vikingo                 | Viking            | Ex-U.S. seiner    | Seiner         | (192)            | Sunk—1970.                 |
| 1968                | Los Felix               | Benita            | Ex-U.S. baitboat  | Baitboat       | (90)             | Sunk—1969.                 |
| 1969                |                         |                   |                   |                |                  |                            |
| 1970                | Mar de Cortez           | Cape Falcon       | Ex-U.S. seiner    | Seiner         | 284              | 4. Operating.              |
| 1970                | Bonanza                 | Lou Jean          | do                | do             | 200              | 5. Operating.              |
| 1970                | Portuguesa              | Portuguesa        | do                | do             | 260              | 6. Operating.              |
| 1970                | Vikingo II              | Antoinette B.     | do                | do             | 277              | 7. Operating.              |
| 1971                | Virgilio Uipe           | Domador           | do                | do             | 329              | 8. Operating.              |
| 1971                | Baja California         | Jeanne Lynn       | do                | do             | 233              | 9. Operating.              |
| 1971                | Maria Luisa             | South Coast       | do                | do             | (209)            | Sunk—1972.                 |
| 1971                | General A. L. Rodriguez | Not available     | Spain-Mexico flag | do             | 600              | 10. Operating.             |
| 1971                | Juan A. R. Sullivan     | do                | do                | do             | 660              | 11. Operating.             |
| 1971                | Ensenda                 | do                | do                | do             | 300              | 12. Operating.             |
| 1971                | Guarnas                 | do                | do                | do             | 300              | 13. Operating.             |
| 1971                | Mazatlan                | do                | do                | do             | 300              | 14. Operating.             |
| 1972                | San Siderano            | Sacatoga          | Ex-U.S. seiner    | do             | 258              | 15. Operating.             |
| 1972                | Ciudad de Mexico        | Elizabeth         | do                | do             | 510              | 16. Operating.             |
| 1972                | Cal-mex                 | Not available     | Spain-Mexico flag | do             | 1,000            | 17. Operating.             |
| 1972                | Cuaternoc               | do                | do                | do             | 660              | 18. Operating.             |
| 1972                | (Unknown)               | Conquest          | Ex-U.S. seiner    | do             | 620              | 19. Operating.             |

## PANAMA FLAG TUNA FLEET 1960-73

|      |       |              |                |                |        |                                                                    |
|------|-------|--------------|----------------|----------------|--------|--------------------------------------------------------------------|
| 1960 | ----- |              |                |                |        |                                                                    |
| 1961 | ----- |              |                |                |        |                                                                    |
| 1962 | ----- |              |                |                |        |                                                                    |
| 1963 | ----- |              |                |                |        |                                                                    |
| 1964 | ----- |              |                |                |        |                                                                    |
| 1965 | ----- |              |                |                |        |                                                                    |
| 1966 | ----- |              |                |                |        |                                                                    |
| 1967 | ----- | Angela       | Not available  | Ex-Yugoslav    | Seiner | 500                                                                |
| 1967 | ----- | Jasna        | do             | do             | do     | Operating. Transfer to Panama flag—1967—68.                        |
| 1967 | ----- | Vida         | do             | do             | do     | 500                                                                |
| 1968 | ----- |              |                |                |        | Do.                                                                |
| 1969 | ----- |              |                |                |        | 500                                                                |
| 1970 | ----- |              |                |                |        | Do.                                                                |
| 1971 | ----- | Royal Star   | Sun Europa     | Ex-U.S. seiner | do     | 367                                                                |
| 1971 | ----- | Eastern Star | Espiritu Santo | do             | do     | Operating. Sold first to Australia, then for transfer Panama flag. |
| 1972 | ----- | Western Star | Coimbra        | do             | do     | 493                                                                |
|      | ----- |              |                |                |        | Operating.                                                         |
|      | ----- |              |                |                |        | 300                                                                |

## COSTA RICAN FLEET 1960-73

|      |       |               |               |                  |          |       |                      |
|------|-------|---------------|---------------|------------------|----------|-------|----------------------|
| 1960 | ----- |               |               |                  |          |       |                      |
| 1961 | ----- | Cal           | Cal           | Ex-U.S. baitboat | Baitboat | 100   | Sunk about 1962.     |
| 1962 | ----- |               |               |                  |          |       |                      |
| 1963 | ----- |               |               |                  |          |       |                      |
| 1964 | ----- |               |               |                  |          |       |                      |
| 1965 | ----- | Southern Seas | Southern Seas | Ex-U.S. baitboat | Baitboat | 140   | Operating as reeler. |
| 1966 | ----- |               |               |                  |          |       |                      |
| 1967 | ----- |               |               |                  |          |       |                      |
| 1968 | ----- |               |               |                  |          |       |                      |
| 1969 | ----- |               |               |                  |          |       |                      |
| 1970 | ----- | Cachita       | Ranger        | Ex-U.S. seiner   | Seiner   | 298   | Operating.           |
| 1970 | ----- | San Jose      | Cape Ann      | do               | do       | (300) | Sunk.                |
| 1971 | ----- | Irazu         | Cathy Lynn    | do               | do       | 360   | Operating.           |
| 1972 | ----- | San Jose      | Beverly Lynn  | do               | do       | 266   | Do.                  |
| 1972 | ----- | Marico        | Not available | Costa Rica       | do       | 1 120 | Do.                  |
| 1973 | ----- | Tesoro        | do            | do               | do       | 1 120 | Do.                  |
| 1973 | ----- | Marisol       | do            | do               | do       | 1 120 | Do.                  |

DEVELOPMENT OF FOREIGN TUNA FISHING FLEETS IN THE EASTERN PACIFIC—TRANSFER OF FORMER U.S. FLAG TUNA VESSELS  
RELATIONSHIP—1957-73—Continued  
CANADIAN FLEET 1960-73

| Year of acquisition | Name of vessel      |                 | Where built | Type tuna gear | Tonnage capacity | Present status                          |
|---------------------|---------------------|-----------------|-------------|----------------|------------------|-----------------------------------------|
|                     | Present             | Former          |             |                |                  |                                         |
| 1960                |                     |                 |             |                |                  |                                         |
| 1961                |                     |                 |             |                |                  |                                         |
| 1962                |                     |                 |             |                |                  |                                         |
| 1963                |                     |                 |             |                |                  |                                         |
| 1964                |                     |                 |             |                |                  |                                         |
| 1965                | Golden Scarab       | Not available   | Canada      | Seiner         | (780)            | Sold out of fishery—1969.               |
| 1966                | Kpeshie             | do              | do          | do             | (310)            | Transfer to Bermuda flag—1972.          |
| 1967                | Pawn Pawn           | do              | do          | do             | (310)            | Do.                                     |
| 1968                | Atlantic Gardner    | do              | do          | do             | 1,000            | 1. Operating.                           |
| 1969                | Dominator           | do              | do          | do             | 1,150            | Based in Ecuador-flag, status unknown.  |
| 1970                | Atlantic Hawk       | Atlantic Gennis | do          | do             | 1,000            | 2. Operating.                           |
| 1971                | Atlantic Ocean Maid | Not available   | do          | do             | 1,000            | 3. Operating.                           |
| 1972                | Atlantic Jag        | do              | do          | do             | 1,000            | 4. Operating.                           |
| 1973                | Atlantic Patron     | do              | do          | do             | 1,000            | 5. Operating.                           |
| 1974                | Royal venture       | do              | do          | do             | 250              | 6. Operating.                           |
| 1975                | Royal City          | do              | do          | do             | 250              | 7. Operating.                           |
| 1976                | Arctic Harvester    | do              | do          | do             | 250              | 8. Operating.                           |
| 1977                | Southward Ho        | do              | do          | do             | 250              | 9. Operating.                           |
| 1978                |                     |                 |             |                |                  |                                         |
| 1979                |                     |                 |             |                |                  |                                         |
| 1980                |                     |                 |             |                |                  |                                         |
| 1981                | Ile De Seine        | Not available   | France      | Seiner         | 600              | Not operating in area after March 1972. |
| 1982                | Presidente le Couer | do              | do          | do             | 600              | Do.                                     |
| 1983                | Biscaya             | do              | do          | do             | 900              | Do.                                     |
| 1984                | Alaba               | do              | do          | do             | 1,600            | Left area March 1973.                   |
| 1985                | Guipuzkoa           | do              | do          | do             | 1,800            | Do.                                     |
| 1986                | Biscaya             | do              | do          | do             | 900              | Do.                                     |



## SPANISH FLAG SEINER FLEET 1960-73

| Year | Ship Name          | Flag  | Operating from | 425   |
|------|--------------------|-------|----------------|-------|
| 1960 |                    |       |                |       |
| 1961 |                    |       |                |       |
| 1962 |                    |       |                |       |
| 1963 |                    |       |                |       |
| 1964 |                    |       |                |       |
| 1965 |                    |       |                |       |
| 1966 |                    |       |                |       |
| 1967 |                    |       |                |       |
| 1968 |                    |       |                |       |
| 1969 |                    |       |                |       |
| 1970 | Garrido Primero    | Spain | Seiner         | 425   |
| 1971 |                    |       |                |       |
| 1972 | Sol de Iponema     | do    | do             | 1,500 |
| 1972 | Sol de Cuba Cabana | do    | do             | 1,500 |
| 1972 | Costa de Marit     | do    | do             | 1,800 |
| 1973 | Augustin Primero   | do    | do             | 1,200 |

Operating from Ecuador.

Operating from Panama.

Do.

Do.

Do.

## JAPANESE FLAG TUNA SEINER FLEET IN EASTERN PACIFIC

| Year | Ship Name           | Flag  | Operating from | 425   |
|------|---------------------|-------|----------------|-------|
| 1960 |                     |       |                |       |
| 1961 |                     |       |                |       |
| 1962 |                     |       |                |       |
| 1963 |                     |       |                |       |
| 1964 |                     |       |                |       |
| 1965 |                     |       |                |       |
| 1966 |                     |       |                |       |
| 1967 | Hakuryu Maru No. 55 | Japan | Seiner         | 1,250 |
| 1968 |                     |       |                |       |
| 1969 | Gempuku Maru No. 82 | do    | do             | 170   |
| 1969 | Hayabusa Maru No. 3 | do    | do             | 170   |
| 1969 | Nissho Maru         | do    | do             | 170   |
| 1970 |                     |       |                |       |
| 1971 | Nippon Maru         | do    | do             | 750   |

Not operating in IATTC area. Left area in 1971.

Not operating in IATTC, left in 1969, has never returned.

Do.

Do.

Do.

Do.

1 Estimated.

Mr. DINGELL. Well, I would like to see Mr. Felando visit with you, but since we have chosen this hearing I think the committee is going to maintain itself in a position to see that all things go fairly and properly.

Mr. LEWIS, you seem to have done something here today.

Mr. LEWIS. I came here and sat there and listened and I sounded like the villain in the scene. I really do not feel like it at all.

I think that you have furthered the efforts of this Government by the action of this committee and in doing something about truly enforcing the Inter-American Tropical Tuna Convention, you should be sure it is fair for all concerned, including my corporation.

Mr. DINGELL. Mr. Potter?

Mr. POTTER. Why did Westgate go to the Netherlands Antilles to operate its two boats?

Mr. LEWIS. Well, quite frankly in the case of the *Atlantis*, quite openly to have a tax advantage. No. 1; and, No. 2, to fish in the unrestricted area after the close of the season because they were not signers of the Inter-American Tropical Tuna Convention.

Mr. POTTER. That is a fairly straight answer.

Mr. LEWIS. That is a straight answer.

Mr. POTTER. The catch was landed in Costa Rica, I believe.

Mr. BOSTWICK. No, it was off-loaded in Costa Rica.

Mr. POTTER. And then transshipped?

Mr. LEWIS. It is in the process of being transshipped, yes.

Mr. POTTER. To the United States?

Mr. LEWIS. No.

Mr. POTTER. Will it ultimately reach the United States?

Mr. LEWIS. Yes.

Mr. POTTER. You say that your competition is currently fishing in violation of the treaty.

Mr. LEWIS. That is a broad statement, you know, and it is hearsay to me from our own fishing captains and the fact that the Canadian boats at the time, that one of the boats that I bought actually was found in violation of the IATTC and was fined something like \$100,000 at the same time that that boat was on a set there with four Canadian boats on a set at exactly the same time.

I think that is what Mr. Felando referred to when he said that he had photographs of fishing in the restricted area on yellow fin tuna and I am sure that tuna does not go to Canada.

When it comes to embargoing tuna, if you are going to embargo tuna, embargo the tuna caught by everybody in the restricted area. Do not just single out Westgate Foods.

Mr. POTTER. O.K., how do we trace it? Let us assume that we come to the conclusion, and I interpret correctly the feeling of the committee that we will have to develop ways of forbidding entry into this country of tuna caught illegally and you are in the business.

How do we go about it? How do we keep your competition from doing what you are complaining about?

Mr. LEWIS. In a way I think right now, and as I said I probably know less about the fishing industry than anybody in this room, but it seems to me that right now the monkey is on the fisherman's back and the captain's back and that maybe the monkey ought to be put on the back of the canners to certify that to their knowledge the

tuna that is going across their scales into their plants is, in fact, caught outside the line or somewhere else in the Pacific or Atlantic Ocean, not in violation of the conservation laws of the United States.

Mr. POTTER. Would you impose on them a duty to make some reasonable inquiry as to where that tuna was caught?

Mr. LEWIS. I think most of them are aware of where it is caught.

I would have to bow to Mr. Felando and Capt. Medina and those who are well informed on what goes on in the fishery and/or maybe Mr. Royal and his union companions as to whether or not that is a feasible approach to this thing.

You are shaking your head.

Mr. ROYAL. I concur with you.

Mr. POTTER. I think this is the first bit of imaginative approach to the problem I have seen yet.

I do not mean to knock the Department of Commerce unduly but I stress the word "unduly" but I do feel that they have used less than the tools that we gave them.

It occurs to me also that we are going to have to improve on the tools that we provide.

Certainly, your statement as a representative of the canning industry is most impressive.

Is it your feeling that the Canadian catch is coming into the United States now?

Mr. LEWIS. A substantial portion of it I believe.

Mr. POTTER. For the record a reefer is a refrigerated boat?

Mr. LEWIS. Yes, refrigerated motor vessel, and I would suspect and I think that NOAA could certainly determine that those cargoes were probably destined for canneries in Puerto Rico.

I have found that in the short time I have been in San Diego there really are not many secrets in the fishing business if you get around to talk to the people who know the answers.

Mr. POTTER. Everybody seems to know but the Department of Commerce.

Mr. DINGELL. Are you suggesting something to us, maybe like a licensing provision for importers or cannerys or people of that kind as a mechanism to stop this rascality?

Mr. LEWIS. Well, how you go about it, Mr. Chairman, I am not prepared to say.

Mr. DINGELL. I am seeking your help.

Mr. LEWIS. I cannot really tell you but if transshipped fish—and a lot of this fish is transshipped—arrives at a cannery with proper bills of lading out of Tobago or Balboa, Panama, where the fish come from, what vessels, where was it caught, I think there has to be some way to get the answers.

Mr. Chairman, I am as concerned with the conservation of this as anybody else.

Mr. DINGELL. Mr. Everett?

Mr. EVERETT. Thank you, Mr. Chairman.

Mr. Lewis, with respect to those other three vessels or two vessels, whatever it may be, that have not been built yet, are you willing to have them comply with the fishery regulations and laws of the United States of America?



Mr. LEWIS. Yes, with one proviso that I am not the scapegoat or the fall guy who complies with those provisions and the rest of the people who are still fishing in violation keep on doing it.

Mr. EVERETT. You say the rest of the people now, are you referring to the American fishing vessel owners, U.S.-documented vessels?

Mr. LEWIS. No, I am not referring to U.S.-documented vessels.

I think the way NOAA enforces the rules for the last couple of years is pretty effective.

Mr. EVERETT. Now, that condition is not attached to the other two vessels, though, is it?

Mr. LEWIS. What condition?

Mr. EVERETT. That you just mentioned with respect to these other three vessels you said you would agree to the restrictions placed on them.

Mr. LEWIS. I signed a restriction on the *Mariner* and the *Atlantis*.

Mr. EVERETT. Are you willing to do the same with the other two?

Mr. LEWIS. The other two, yes; if I feel that there is going to be some teeth in the law.

Mr. EVERETT. But that condition is not applicable to the two you just signed.

Mr. LEWIS. No, it is not.

Mr. EVERETT. That is an absolute agreement that you will abide by.

Mr. LEWIS. Well, I imagine that NOAA would try to pull a 1916 law that does not in our opinion apply as they did with the *Mariner*, therefore, I could not export them.

Quite frankly, it is my inclination not to export those two vessels as it stands right now.

Mr. EVERETT. I was wondering why do you go through the Eximbank for financing? I understand that funding is fairly well available on the west coast.

Is it any cheaper to go through the Export-Import Bank?

Mr. LEWIS. Yes.

Mr. EVERETT. How much cheaper?

Mr. LEWIS. About  $2\frac{3}{4}$  percent cheaper.

When you are talking about \$2.8 million over the life of a loan, that is a pretty good amount of money.

Mr. EVERETT. Now, your application for the other two vessels I believe was turned down for a loan. Is that correct?

Mr. LEWIS. That I do not know.

Mr. EVERETT. On May 9 the decision was made by Mr. Bostwick based on his testimony a few moments ago that the application for a loan, or whatever they call it, insurance guarantee or something, had been turned down.

Mr. LEWIS. That quite frankly was news to me when I heard it. I had not been informed of it. The guarantee is very important for a borrower.

Mr. EVERETT. What other alternatives would you have for financing at that cheap rate?

Mr. LEWIS. I quite frankly have no other source for that kind of rate.

Mr. EVERETT. One other question.

With respect to those fishing vessels that are registered foreign, do you intend to replace the American crew with foreign fishermen or will they stay on the vessel?

Mr. LEWIS. I beg your pardon. I could not hear you.

Mr. EVERETT. With respect to the *Atlantis* and *Mariner* they still have the American crews?

Mr. LEWIS. Yes.

Mr. EVERETT. Do you anticipate replacing the American crews with foreign crews?

Mr. LEWIS. No, sir, not at this time.

Mr. EVERETT. Not at this time? Maybe in the future they might get disenchanted, then what?

Mr. LEWIS. That is possible, you know. We have some boats in Africa and the American fishermen get very disenchanted laying off the African coast and they will not even stay on the boat.

Mr. EVERETT. I have no more questions, Mr. Chairman.

Mr. DINGELL. Mr. Lewis, the committee is grateful to you for your testimony.

Madam Chairman?

Mrs. SULLIVAN. No more questions.

We thank you.

Mr. DINGELL. The point you raised will be pursued. You can rest assured of that.

Our last witness is Ambassador Donald McKernan.

Mr. Ambassador, you have been most gracious and we thank you.

Identify yourself for the record and your associate with you.

**STATEMENT OF AMBASSADOR DONALD L. McKERNAN, SPECIAL ASSISTANT FOR FISHERIES AND WILDLIFE AND COORDINATOR OF OCEAN AFFAIRS, DEPARTMENT OF STATE; ACCOMPANIED BY WILVAN G. VAN CAMPEN**

Mr. McKERNAN. I am Donald L. McKernan, Special Assistant for Fisheries and Wildlife and Coordinator of Ocean Affairs, Department of State.

My associate is Wilvan G. Van Campen, a member of my staff and a specialist in the Tuna Convention and in our affairs with Latin America.

Mr. DINGELL. He is well known to the committee and we are happy to welcome you.

Mr. McKERNAN. I do have a statement, Mr. Chairman, that I would like to put in the record and do my best to try and bring some additional light if I could and a few facts about some questions that have been raised.

Mr. DINGELL. Without objection, your entire statement will appear in the record at this point as though read.

Mr. McKERNAN. Mr. Chairman and Members of the committee, as I understand the purpose of this hearing, it is to enable the committee to inform itself concerning problems of enforcement of conservation measures in the tuna fishery of the eastern tropical Pacific. Problems of enforcement and control do exist. They are of serious concern to the Government and to our tuna industry, not only

because of their present effects on the conservation of the tuna resources and the economic interests of our fishing industry in this one fishery but also because of their more general implications for the success of international efforts in the cooperative conservation of high seas fishery resources.

The solution of these problems will not be simple, because of the nature of the fishery and because of the involvement of questions of national jurisdiction over vessels on the high seas.

We do have certain tools for tackling these problems, in our laws and regulations and through our international organizations and diplomatic contacts.

We are at present at the stage of testing whether these tools will prove adequate or whether they will need to be reinforced by other measures.

Tuna fishing is carried on almost exclusively on the high seas, and therefore every major tuna fishery is legally open to participation by the vessels and nationals of all countries.

Much tuna fishing is done at great distances from land and often at very great distances from the flag country of the tuna vessel. Modern tuna fishing vessels have extensive operating range and carry as much as 2,000 tons of fish. The tuna which they freeze on board is a relatively imperishable commodity, it can be offloaded wherever refrigerated storage is available, it can be transhipped to refrigerated carrier ships at any anchorage, and it is in high demand in a number of markets in various parts of the world. The commodity flows worldwide through a complex of trade channels.

The number of countries which have modern tuna fishing vessels or which have plans to acquire such vessels is constantly increasing. The national identification of fishing effort is an increasingly complex problem. It is possible to find an example of capital from one country invested in a company in a second country which owns boats that are registered in a third country and based in a fourth country. Under these conditions, the responsibility for control, which of course nominally rests with the country of registry, may in practical terms be difficult to assign.

There are other practical difficulties. Enforcement of tuna conservation measures must generally require the ability to know when vessels leave and return to port, where they fish, and how much of what kinds of tuna they catch. The inspection and surveillance effort necessary for acquiring such information on a fishery that covers thousands of miles of ocean and operates from many widely separated bases is extremely costly. If the information has to be firm enough to serve as evidence, the effort required is even greater. The United States undoubtedly has the best capability for enforcement of any country participating in the eastern Pacific tuna fishery, yet it has been only with great effort and expense that we have been able to control our own tuna fleet effectively in that area.

I make these points about the difficulty of the problem not as an excuse for not tackling it but in order that the committee may not expect quick and easy solutions. In past years, we received reports from time to time that certain foreign vessels were suspected of operating in the eastern Pacific in a manner inconsistent with the IATTC tuna conservation program.



Our estimate was that these operations were not on such a scale as to have a serious effect on either the conservation program or the economic interests of our fishermen, although they were of course disturbing in terms of principle.

This year a sudden increase both in the number of powerful vessels of non-member countries fishing in the IATTC regulatory area and of the movement of American-owned and controlled vessels to foreign flags of convenience has raised the problem to a more serious level and has made positive action imperative.

This problem was foreseen by the Congress as long ago as 1962, when the Tuna Conventions Act was amended to provide for trade sanctions against countries which permit their vessels to conduct fishing operations which tend to diminish the effectiveness of the IATTC conservation program. A more general authority for trade sanctions in such cases was provided in 1971 by Public Law 92-219, which amended the Fishermen's Protective Act.

The possibility of applying these provisions of law to the solution of the present problem in the eastern Pacific tuna fishery is being studied. At the same time, the responsible Government agencies are working actively to achieve by persuasion and cooperation solutions which will make recourse to sanctions unnecessary.

Just recently, reason has prevailed with the U.S. operator of several large tuna seiners under a foreign flag and has moved him to give assurances that his vessels will be operated as if they were under U.S. regulations. Within the IATTC family we have developed a clear analysis of practical enforcement problems and we are planning at the annual meeting of the Commission this year to advance concrete proposals for a cooperative enforcement system.

We have made direct bilateral approaches, both informal and formal to member and prospective member governments which appear to have problems in controlling their vessels, and we have offered them the cooperation of our surveillance and enforcement systems.

Although we have had some encouraging responses to these approaches, it is at this moment too early to say whether or not we will succeed in establishing effective arrangements that can overcome the practical problems and the no less difficult legal and jurisdictional problems.

You may be assured, Mr. Chairman, that we are determined to use every possible means to secure effective and credible enforcement of internationally adopted conservation measures, for without such enforcement the future of international cooperative management of high seas resources cannot be very bright.

Now, Mr. Chairman, the United States takes by far the bulk of the fish in the eastern tropical Pacific.

We have 129 U.S. seiners and 53 bait boats operating in this regulatory area. Their total capacity is 94,000 tons. Non-U.S. capacity in this area is about 36,000 tons, of which at the present time, by the way, we understand that 4,700 tons of this belongs to France and has departed from the fishing area. About 13,000 tons of this 36,000-ton, non-U.S. tonnage belongs to countries which are not IATTC members.

Spain is the largest non-member country in the area with five boats totaling 6,000-plus tons.

We have been talking to the Spanish Government and we are informed by them informally that they are intending to join the Commission and have an interest in cooperating with us in enforcement.

We are pushing them through our diplomatic channels to try to get them into the Commission as quickly as we can.

France, for example, will deposit its instrument of adherence to the IATTC convention next week, I am informed. We have given them a thorough explanation of the practical enforcement problems which they will face as a member.

The question of Canada has come up; and, by the way, I think it is probably true, although I do not have the facts, but I have enough confidence in the tuna fishermen to believe that what they said is true, that the Canadians have been operating unrestricted and the Government has not been able to adequately regulate their fishermen. Just as we for some time, before we got a new system in effect using radio triangulation, could not adequately regulate our own people. We have made a formal approach to Canada concerning this. Right at the present time we are awaiting their response.

The people at the level we have been dealing with have indicated they are interested in working with us in developing an effective system for regulating their large vessels in the area.

Right at the present moment, Mr. Chairman, most of the vessels are operating on the last free trip, which comes after the closure of the season, so that most of the vessels can operate at the present time in the regulatory area and catch as much yellowfin as they possibly can catch. This is permitted under the regulations.

Now, we have thoroughly explained the problem to the Dutch Government.

Incidentally, they were somewhat surprised to find that they were in the eastern tropical Pacific tuna business. Of course, the flag is that of the Dutch Antilles Government.

We have talked to the Dutch Government and talked to them very frankly about the problem, including the provisions for trade sanctions against countries not cooperating, and they have indicated both concern about this and a very great willingness to try and get the Netherlands-flag vessels under control.

Now, of course the president of Westgate has indicated that his company is prepared to cooperate, and I certainly think he is to be congratulated for this and I also want simply to add to what I think he has said very well, that it seems to me that this plan of operation which takes the vessels out of U.S. control, out of control of the conservation program, I do not believe it originated with Westgate. And I believe they acquired these vessels, this particular company, after this plan was conceived and partially put into operation.

By the way, I do not like the plan. I think it is a terrible, terrible thing to happen to the United States and to the tuna fishing industry itself because it destroys the entire international Commission conservation program that this United States has spent 70 years developing with an excellent international reputation. For the U.S.

tuna industry, an industry which will be most affected by the unilateral extension of jurisdiction, to initiate this particular kind of program is to simply, you know, cut their own throat. It makes no sense whatsoever insofar as the tuna industry is concerned. I mean not only fishermen belonging to unions and boat owners, but the canners too. I am sure that they would agree that we would not like to see the day when there were not U.S.-flag vessels catching a very significant portion of the catch that is going into their canneries.

One or two other problems, for example Panama. A number of vessels have taken out the Panamanian flag. Panama is a member of the Convention, and I believe Mr. Felando had some question, and so do we, about the ability of the Panamanian Government to appropriately control their vessels. Once again, when the number of vessels is significant and violations by Panama seem evident, why we are going to have to try and do something about that. It is a problem that perhaps needs careful consideration in the very near future.

Mrs. SULLIVAN. Are the Panamanian-flag boats owned by Panamanians or owned by Americans?

Mr. McKERNAN. I think for the most part, Mrs. Sullivan, and I am not absolutely sure but I believe it is fair to say for the most part they are probably owned by the United States.

I think there may be Yugoslav vessels there also. My colleague, who is more expert in this than I am says they are partially U.S.-owned.

Mrs. SULLIVAN. And registered under the Panamanian flag?

Mr. McKERNAN. Yes, there are six at the present time.

The Tuna Convention Act gives us the power to prohibit importation into the United States of tuna taken in a way that diminishes the effectiveness of the conservation program, whether imported directly from the flag country or transshipped as apparently has been done in the case just cited before this committee.

When the tune is not intended for the U.S. market, the Pelly amendment to the Fishermen's Protective Act may well give us the power to retaliate against the offending flag country by prohibiting entry of other fishery products. This is obviously going to have to be consistent with our GATT commitments but it is clear that if it is affecting the conservation program, why it is consistent with our GATT commitments.

The major problem in either case is getting the evidence, as has been pointed out the committee today, that fishing was done in such a way as to diminish the effectiveness of IATTC conservation program and the second problem, of course, is identifying the particular fish to be embargoed.

I do not think that the committee should lose sight of the fact that the United States itself is taking about 80 percent of the yellowfin tuna in the eastern tropical Pacific, and it is considerably higher than that when one considers the catch by foreign-flag vessels owned by the United States, by U.S. citizens or U.S. corporations or combinations thereof.

We ourselves have it within our power to conserve or to deplete these resources, and I think this is a very grave responsibility and it certainly has implications far beyond the tuna industry. It has



implications for our Law of the Sea position and implications for other international commitments in the ocean field.

I do not wish to say any more. I realize the hour is late.

Mr. DINGELL. You make a good statement.

Now, I am troubled with these Panamanian-flag vessels that are owned by the United States. Panama is a signatory.

Mr. McKERNAN. United States citizens, you mean.

Mr. DINGELL. Panama is a signatory.

Mr. McKERNAN. Oh, yes.

Mr. DINGELL. But when United States citizens fish illegally in the waters through the use of foreign-flag vessels who are signatories or not signatories, do you have sufficient authority without sanctions to bring them into conformity with the responsibilities that American citizens share under that?

Mr. McKERNAN. I wish to point out that Commission regulations allow certain preferences for small industries, that is for beginning industries.

There is a 4,000-ton allowance under the Commission's regulations for countries, for small vessels, vessels of less than 400-ton registered net tonnage, and then there is I believe another allowance.

Can you help me with that?

Mr. VAN CAMPEN. There is a basic 1,000-ton allowance below which no country need apply any regulation.

There is a 6,000-ton allowance for vessels of under 400-tons capacity of each country to be taken into closed season and above that, for only one particular country, Mexico, a special allocation has been provided on a yearly basis in the last few years to take care of special problems so that in the case of Panama there is only the 6,000-ton small boat allowance available.

Mr. McKERNAN. Also it seems to me to be fair—I simply must argue with my good personal friend and colleague of many years, Mr. Felando. I do not think Mexico is a problem at the moment. They can become a problem but I do believe the allocation we have agreed to in the regulations of the Commission at the present time allows Mexico to take the yellowfin tuna that Mexico is taking, and the records that I have, at least for 1972, would lead me to believe that Mexico was allowed to take the yellowfin tuna that was recorded by the Commission and allowed to do it in a legal manner.

Now, there may be some misunderstanding here and I might be misinformed, but I think that the Regional Director of the National Marine Fisheries Service is of that opinion also and Mr. Van Campen also.

I would like to say that I am not satisfied that the Government of Mexico has an adequate system organized yet for the future, and I would not say that Mexico will not become a problem, but I would say that I think it is a mistake for the record to show that there is any clear evidence at the present time that Mexico is in violation of the Tuna Commission regulations because I do not believe that is the case at the present time.

Mrs. SULLIVAN. May I ask this, is a 1,000-ton vessel a very small vessel?

Mr. McKERNAN. No, a 1,000-ton vessel is a large vessel. We have a few vessels that go up to 2,000 tons.

Mrs. SULLIVAN. If it is a large vessel why should they be given the privilege of that? Is it because they probably only have one vessel to supply their country, or what?

Mr. VAN CAMPEN. I think perhaps if you are referring to something I said I did not make myself clear.

A country may be a member of the Inter-American Tropical Tuna Commission and accept the obligation of membership but until its total annual catch reaches a level of 1,000 tons, which may be taken by any number of boats it has, it is not obligated to impose any restrictions on its fishermen.

Mr. McKERNAN. The reason, Mrs. Sullivan, that that exception was made was based upon the fact that some of these small countries were trying to get into the tuna business and felt that originally they did not have the opportunity and if they had maybe one vessel or two small vessels the cost of organizing and implementing an enforcement program would be very burdensome and difficult for them, and so the provision that we agreed to and other nations, developed nations fishing in the area agreed to, was that they could be exempt from enforcing the regulations until their total annual catch increased above 1,000 tons, which seems to me to be fair and reasonable.

Mrs. SULLIVAN. I misunderstood the 1,000 tons.

It means they could fish at times when others are prohibited, is that right?

Mr. McKERNAN. Exactly.

Mr. DINGELL. Mr. Everett?

Mr. EVERETT. Thank you, Mr. Chairman.

Mr. McKernan, I think you said awhile ago that action taking place now might well give you power to invoke some of the sections provided by law, the Pelly amendment, et cetera.

Is it your opinion that there have not been sufficient violations as yet for these effective measures to be triggered?

Mr. McKERNAN. Yes.

Mr. EVERETT. It has not?

Mr. McKERNAN. That is my opinion.

Mr. EVERETT. To what degree has it not? Where do you draw the line? How much more do we have to contend with?

Mr. McKERNAN. I think this is subjective, but at the present time practically the entire U.S. fleet of some 90,000 tons is fishing free.

Now, it is true that this one vessel which did not unload its catch before the closed season was in violation and I personally am very unhappy and my Department is. I think this is contrary to the concept and I am disappointed and sorry that an American company is involved.

I frankly think it is deplorable, but at the same time, as I understand the law, it would be hard to show that this would have a significant effect on the effectiveness of the conservation program, and that is one of the qualifications, one of the requirements to impose the prohibition on imports.

Mr. EVERETT. With respect to the Pelly amendment, a country does not have to be signatory to the convention, any country that violates the regulation could trigger the Pelly amendment.

You say there have not been sufficient cumulative violations for action to be taken under the Pelly amendment.

Mr. McKERNAN. I would say so.

Furthermore, the Pelly amendment, as has been pointed out, is somewhat cumbersome in that it requires action by the President and facts and data have to be accumulated to prepare such a case.

It seems to me that the Pelly amendment was designed to act against governments, and so it does have language which makes its application in this circumstance cumbersome, and while I am not a lawyer, Mr. Everett, I would think it would probably be very difficult, if not impossible.

Mr. EVERETT. Are you familiar with the language in the act that refers to foreign nationals and foreign-flag vessels?

Mr. McKERNAN. I do not have the language.

Mr. EVERETT. In view of the fact it is so cumbersome, are you suggesting that maybe we should consider amending this law to make it more easy to administer in order to help achieve the purposes of our overall goal of protecting the resource?

Mr. McKERNAN. I believe that Government itself will be alert, more alert, let me add, to circumstances such as this and it will be much more difficult in the future for individuals or companies to get away with this sort of thing.

In this particular instance, I might add, it seems to me that the company has taken a very good action, an action which I suppose is going to cost the company in the long run a significant amount of money to correct what I think was an error in judgment on somebody's part in the first place.

Had anybody from that company asked my opinion, I would have clearly indicated to them that I would think that the U.S. Government would have to close such a loophole. I would have to close it immediately because it simply means our whole program, our whole position on the Law of the Sea is down the drain, and it makes no sense for the Government to standby and see this committed.

The company itself, I think, has shown a very large degree of appreciation of the problems of the industry and Government.

Mr. EVERETT. I think the Pelly amendment, if I remember, was passed over the objections of the State Department.

Mr. McKERNAN. That is not so. I think that is incorrect. I heard the State Department criticized two or three times and perhaps we deserve it, but in this case I myself was very much interested in this and I think the record will so show.

Mr. EVERETT. It was not passed over your objections but I feel pretty sure the State Department still opposed this legislation.

Mr. McKERNAN. I think we suggested some amendments which you accepted.

Mr. EVERETT. Yes, sir.

Were they cleared by OMB?

Mr. McKERNAN. I believe they were. I will be glad to check the record.

[The information follows:]

#### OMB CLEARANCE OF BILL

According to the Department's letter of December 20, 1971 to OMB recommending that the President sign the enrolled bill H.R. 3304, the Department



made substantive suggestions concerning the bill to the House, which were adopted at least in part, and specific suggestions for amendments to the Senate, which were not. In accordance with standard procedure, all reports from the Department to the Congress concerning this bill were cleared by OMB.

Mr. EVERETT. You are saying it was not effective, so we wish you would give consideration to maybe some suggestions.

Mr. McKERNAN. I apparently did not make myself clear. I think it is an effective tool.

Mr. DINGELL. Did you say "ineffective" or "effective"?

Mr. McKERNAN. "Effective." I think it can be used. We have indicated to the Netherlands Government by giving them copies with underlined portions to indicate to them how we believe it might well be operated; and I might add that there was no hesitation in getting their cooperation and they indicated their intent immediately to look into this and to attempt to prevent anybody from using their flag to violate a multilateral convention of this importance.

The cooperation from their government, at least in the initial stages, is excellent.

Mr. EVERETT. One final question.

Are any other laws available to us in the situation we are concerned with other than the Pelly amendment, the Tuna Convention Act, and the Marine Mammal Act?

Mr. McKERNAN. Outside of those three I am not aware of any other.

Mr. EVERETT. Just those three. You are not aware of any other?

Mr. McKERNAN. I am not sure of the Marine Mammal Act.

Mr. POTTER. I am going to ask you one question, Mr. McKernan.

You told us, and I commend you for it, that you were getting more countries to become signatories to the Inter-American Tropical Tuna Convention. That is fine. But it does not really seem to me that is the name of the game. The question is not who belongs to the Convention but who enforces the Convention and how that enforcement is going to happen.

If the Canadians belong and if Canadian vessels are fishing in violation of the treaty, then it seems to me the Canadian Government ought to be given authority to regulate what happens to the catch of those vessels.

If the answer is it is only the Canadian Government, then we are in trouble. We set the kind of situation we are confronted with here where the Canadians take fish, land them and transship them and they are brought into the United States.

I cannot help but feel we are going to have to develop some more sensitive and specific mechanisms to deal with these problems, whether that has to do with embargoes or licensing and control, rigidly license the industry. I just do not know.

I would commend to you an examination of what tools we are to develop in order to improve our enforcement capability under the convention because there it seems to me is where the problem really is to be found.

Mr. McKERNAN. I would agree with you, Mr. Potter, that the current enforcement mechanism is imperfect. I think it is working. I believe the results would show it is working.

Mr. Felando was absolutely accurate when he said the yellowfin

tuna resource is in perhaps the best condition that it ever has been for the last 20 years, and I think when one considers the demands for tuna and the price being paid for it, one wonders how an instrument as imprecise and blunt as this can be as effective as it has been.

Mr. POTTER. Let me interrupt you there.

What troubles me is not that and I will accept that it has been working fairly well up until now, but what concerns me is that once a loophole opens up—and it seems to me we have uncovered a couple, but once a loophole opens up and the insensitivity then shifts to the American industry to flee to a foreign flag in order to maintain their competitive position you can find those stops which we agree are in good shape very rapidly becoming not in very good shape.

Mr. McKERNAN. Mr. Potter, it seems to me we have closed the loophole. I do not doubt for a moment there will be other loopholes. I have been dealing with fishermen for 30 years, and I find fishermen are extremely smart people and they generally outwit bureaucrats because they have their money on the line and they work very hard at it. For example, our regulatory system did not work well at all, so then it took us a couple of years and we finally found a way of enforcing the regulations against American fishermen and, as has been pointed out here, that is working pretty well. I just do not see a perfect system, when you are dealing with the government on the one hand and people who have such competitive problems and competitive pressures on them to make their living and to repay tremendous investments and so on that there is this, perhaps I should not call it that, but kind of a contest, and that contest goes on.

I doubt that we are going to find a perfect mechanism and still allow our fishermen to have the kind of freedom which make them so competitive and makes this fishery such a profitable fishery for the United States.

Mr. POTTER. Well, Mr. McKernan, it seems, to quote you from another day and in another context, the situation is perfectly imperfect.

I cannot believe that you and Mr. Lewis live in the same world. What he is telling us is that he knows his competition is going to other countries rather than the legitimate legal route and he has to do this in order to survive.

Well, if that is true, then it seems to me we have a problem we cannot worry about next year. We have a problem we have to worry about right now because the competitive situation will change and something is going to have to be done. We have to move.

Mr. McKERNAN. I would agree.

My own judgment, for example, is if there are better enforcement schemes, some of which at the present time may not be acceptable to our own industry, let us have them.

Mr. POTTER. For example?

Mr. McKERNAN. An international scheme which would put our vessels as well as others under the control of an international system. I am not certain that I would myself recommend that at the present time; but that is one way that this would improve and, of course, it would not be applied imperfectly or not equally to everybody.

Mr. POTTER. Would you suggest some others that might not be visionary?

Mr. McKERNAN. Not that visionary. We have international enforcement schemes in almost all the oceans of the world. We have it in the North Atlantic right now. We have two international schemes in the North Pacific by the way, one applying to a commission that you are quite familiar with, the Sealing Commission, and it has been in effect for a long time and has worked very well, so there are schemes that do allow general boarding and general international inspection of all vessels engaged in the fishery by other countries' vessels, and they do work.

Here it seems to me that there are probably only a few nations that can operate enforcement vessels, and so this particular scheme might not be acceptable to all.

There may be a better scheme and, for example, the suggestion that Mr. Lewis made is a good suggestion and it has been applied in our States.

Several of our States, for example, make the purchaser of fish equally liable to the man who caught the illegal fish, so that I think that perhaps Government might well give this further consideration.

By the way, the argument that has been raised against this—and I can give you that argument—it is how does the canner know when, where, and what manner the fish has been caught? That is, he would have to set up his own system of finding out where the fisherman caught the fish, and it is impractical and does pose a serious problem.

While I tend to agree with the gentleman, that is a great system, it would be hard to enforce and hard for a buyer to be certain that the fish he got was taken legally.

Mr. POTTER. I have some other questions, Mr. McKernan, but considering the fact that it is 7 o'clock, I would prefer to submit them in writing.

Mr. DINGELL. Mr. McKernan and Mr. Van Campen, we thank you.

We will stand adjourned at this time until the call of the Chair.

[The following was submitted for inclusion of the record.]

SAVE THE DOLPHINS,  
San Francisco, Calif., May 12, 1973.

FRANCIS P. STILL,  
*Chief Clerk, Subcommittee on Fisheries and Wildlife Conservation and The environment, House of Representatives, Committee on Merchant Marine and Fisheries Washington D.C.*

DEAR CHIEF CLERK STILL: Because of the imperativeness of the situation to be discussed on May 16, 1973, we reserve the right to have this statement read aloud and entered into the official records of this hearing.

During the course of our concerted efforts to expedite pertinent programs emanating from government fisheries studies, working contiguously with the purported studies of the American Tunaboat Association, concerning the incidental killing of dolphins during commercial tunafishing operations in the Southeast Tropical Pacific, we have been informed of the efforts of certain tunaboat owners to circumvent regulations by the registering of their perspective vessels with a nation which is not a member of the Inter-American Tropical Tuna Commission in hopes of a continuance of fishing during the closed season.

We realize the myriad of reasons which will undoubtedly be used or discussed by the boat owners, all of which we are sure will be closely scrutinized by the hearing now in progress.



In our hopes to add to the efficacy of the hearings we will submit yet another reason which might have an increasing influence on the actions of other boat owners within the next few critical years. This particular assertion deals with the action of certain boat owners to take a re-registration stand on an experimental basis as a challenge to escape the imminent restrictions and liabilities encompassed within the newly enacted Marine Mammals Protection Act of 1972. The pragmatic fact dealing with the certainty of a restriction in using porpoise to locate and catch tuna utilizing conventional purse seine nets must have a heavy influence on these re-registration decisions.

Through the extrapolation of certain Marine Fisheries Service biologists, it is estimated that American tunafishing vessels are responsible for an estimated 250,000 dolphin deaths annually due to current purse seine netting techniques. The need for a continuance of year around fishing might conceivably emanate (we submit) from the fact that these mortality figures have made it increasingly difficult for the highly competitive tunaboat captain to spot dolphin herds, which would assuredly account for the action taken recently by the Commerce Department banning the use of the radio transmitters attached to dolphins by tuna fishermen for the purpose of electronically locating that particular herd at a later time. It is obvious to anyone studying the situation that the decrease in the size and number of individual dolphin herds is directly attributed to the destructiveness of the purse seine netting system. This problem, which claims to have no scientific basis (only because studies of dolphin population dynamics have never been conducted) is magnified in importance by the annual increase in the number of tunaboats built and put into service in the United States. The entire American tunafishing industry is predicated on the competitiveness of each tunaboat in locating these herds during the course of the commercial season. Because of the increased difficulty in locating dolphin herds, it becomes imperative that the boat owners take any action to assure a profit, as the overall expense of operating and maintaining a modern purse seiner is phenomenal.

We strongly assert that the above argument has a great influence on the overall decision by individual tunaboat owners to circumvent the regulations of the IATTC, and, furthermore, that unless strong action is taken against the violators (via refusal to import any tuna products caught in this manner) the Marine Mammals Act will be ineffective in its objective to curtail the incidental extermination of the three effected dolphin species in the not too distant future.

Sincerely,

STANLEY M. MINASIAN, *President.*

AMERICAN TUNABOAT ASSOCIATION,  
*San Diego, Calif., June 8, 1973.*

NED P. EVERETT,

*Counsel; Subcommittee on Fisheries and Wildlife Conservation and the Environment, Longworth House Office Building, Washington, D.C.*

DEAR MR. EVERETT: During the Hearing of May 16, 1973, on the above matter, Congressman Studts asked about the number of vessels in the U.S. Tuna Fleet owned by cannerys. I answered that I would provide such information by letter to the Subcommittee.

According to the Director of Investigations, IATTC, during the months January to April 1973, the number of vessels operating in the Eastern Pacific Yellowfin Regulatory Area, as well as the total frozen carrying capacity, was 191 vessels and 95,486 short tons capacity. By classification, the figures are as follows:

|                    |     |          |
|--------------------|-----|----------|
| Purse seiners..... | 131 | 1 90,614 |
| Bait boats.....    | 37  | 4,291    |
| jib boats.....     | 23  | 581      |
| Total.....         | 191 | 95,486   |

1 Capacity tons.

The above information does not include U.S. tuna vessels operating in the South Atlantic or that are inactive status in California.

Of the 191 vessels, our records reveal that about 35 vessels are owned in their entirety by cannerys, and that control is divided between individuals and cannerys on another 24 vessels, the ownership interest by the cannerys in such vessels being in excess of 30%. At the present time a great deal of selling of vessel ownership interests by non-cannerys is taking place in the fleet. The above figures indicate the status of vessel ownership as of the first few months of 1973.

Very truly yours,

AUGUST FELANDO,  
*General Manager.*

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[From Business Week, Number 2259 Dec. 16, 1972]

#### WALL STREET

The smart money goes fishing. Tuna boats, it seems, are the Street's latest smart-money investment, but there are tricks to it. One venture capital deal quietly being put together now—to start a fishing operation and combine it with a tax shelter—shows what the angles involve.

Catches by South American, Far East, and U.S. fleets aren't keeping pace with U.S. demand, and as a result, domestic tuna prices have doubled the past few years. But the U.S. government refuses to recognize many nations' claims that their territorial waters extend 200 mi. to sea—and thus it won't permit U.S. companies to buy foreign licenses to fish those waters. Solution: Register the new company in the Bahamas and base it in El Salvador. El Salvador's attractions are that it's handy to the Panama Canal and it hasn't signed international fishing quota agreements.

But by setting the company up outside U.S. tax jurisdiction, the depreciation and investment tax credit on the fishing boats might go to waste. So the investors plan to set up a separate tax shelter in the U.S. to build and maintain the boats, then lease them to the new fishing operation.

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International Longshoremen's & Warehousemen's Union, 20th Biennial Convention, San Francisco, Calif. April 30–May 4, 1973, Resolution No. 42

#### RESOLUTION ON FOREIGN FLAG RUNAWAY

Whereas the government of the US is a member of the Inter-American Tropical Tuna Commission along with several other nations, and

Whereas the purpose of this Commission is to conserve the stocks of yellow fin tuna that migrate in the Eastern Tropical Pacific; and

Whereas regulations and quotas were implemented in 1966 to protect this species of tuna; and

Whereas in 1972 the US passed a Marine Mammals Protection Act to protect various marine mammals; and

Whereas some US tuna boat owners and companies, in order to avoid the tuna regulations and Marine Mammals Protection Act and other laws are placing their vessels under foreign flag registry (Dutch)-and

Whereas if this trend is not stopped immediately the end result will be the destruction of the yellow fin tuna stock, but even more importantly, the end of employment for the American fishermen, Therefore be it *Resolved*: That this union go on record insisting that our government immediately take all necessary steps to stop this runaway operation, and negotiate with those countries whose flags these vessels are flying, and third party nations which are being used for trans-shipment of fish; and Be it further

*Resolved*, That any fishery product finding its way into the U.S. from those countries which provide a flag of convenience be denied entry into the U.S. and that copies of this resolution be sent to President Nixon, the U.S. Department of State and Governor Reagan of California.

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International Longshoremen's & Warehousemen's Union, 20th Biennial Convention, San Francisco, Calif., April 30–May 4, 1973, Resolution No. 42-b

## RESOLUTION ON MEXICAN FISHING LAW

Whereas on May 10, 1972 the President of Mexico signed a new fishery law; and

Whereas the new law was published in the official Gazette May 25, 1972; and the implementation went into effect June 15, 1972, and

Whereas Article #37 of this Law provides that in order to purchase a Mexican license, at least 50% of the crew of the fishing vessel must be Mexican citizens; and

Whereas the Mexican crew members must be contracted for in a Mexican port; and

Whereas the enforcement of this Law on US tuna vessels would indeed create a tremendous economic hardship and would place American fishermen's Unions in a position of seeing their members left on the docks—unemployed—to satisfy this Law; and

Whereas the American fishermen have since the end of World War II been slowly forced out of business due to seizures, shootings, fines and excessive imports by other countries, and have suffered enough; and therefore be it

*Resolved*, That this union go on record to urge the State of California and the US Government to use their every means and influence to see to it that Mexico removes Article #37 from its new fisheries law, or at least that it not be enforced against US fishermen and vessel owners, and be it Further

*Resolved*, In the event Mexico enforces this 50% hiring of Mexican citizens on US tuna vessels, and refuses to cooperate, that all fishery products entering the US from Mexico be denied entry, and that copies of this resolution be sent to President Nixon, the US Department of State, and Governor Reagan.

## FOREIGN FISHING VIOLATIONS, IATTC—1973

JOE MEDINA, JR., M/V "CAPT. JOE MEDINA"

## AFFIDAVIT

STATE OF CALIFORNIA,

*County of San Diego, ss:*

I, JOE MEDINA, JR., being duly sworn, say:

That I am the Master and Managing Owner of the U.S. flag tuna fishing vessel CAPTAIN JOE MEDINA, and that during the fishing trip commenced on 21 February 1973, the following events occurred:

That on or about 7 April 1973, I heard a high seas radio conversation between Captain Art Ferreira, of the Dutch flag tuna fishing vessel ATLANTIS and Captain Manny Silva, of the U.S. flag tuna fishing vessel BOLD CONTENDER. Captain Ferreira told Captain Silva that he had the 900 pounds of net twine ordered by the BOLD CONTENDER from a net supplier in Panama, and that he wanted to rendezvous so as to make the transfer. Captain Silva told Captain Ferreira to go to the location where "your wife was aboard your vessel".

That the BOLD CONTENDER is a "code boat" with the CAPTAIN JOE MEDINA and that both vessels were fishing in the same general area off Costa Rica and Panama. This position on this day was generally 7 degrees, 30 minutes, North Latitude; 83 degrees, 30 minutes, West Longitude or about 76 miles South, Southeast of Isla del Cano, Costa Rica. All the fishing done in this area was on porpoise schools associated with Yellowfin Tuna exclusively, no Skipjack Tuna were mixed with the Yellowfin Tuna. That I knew from the conversation between the Captains of the ATLANTIS and the BOLD CONTENDER that the ATLANTIS was headed to a rendezvous near my vessel.

That on or about 8 April 1973, I heard another high seas radio conversation between Captain Art Ferreira of the ATLANTIS and Captain Manny Silva of the BOLD CONTENDER. Captains Ferreira and Silva were positioning their vessels so as to accomplish the rendezvous and transfer the net twine.

That on or about 8 April 1973 and after the rendezvous with the ATLANTIS, I saw the BOLD CONTENDER move Northwest from the ATLANTIS, which was then located in an area about 41 miles South Southeast from Isla del Cano, Costa Rica. My vessel was moving west of such position. While working in this area, I saw the ATLANTIS in a "set"; they were in the stage



of rolling in their net on board. The distance between the ATLANTIS and the CAPTAIN JOE MEDINA was about three (3) miles, and there was no difficulty in making identification with the binoculars. I also made a set in this area on a school of Yellowfin Tuna associated with porpoise. We missed the school of fish and porpoise. After completing our set, I noticed that the ATLANTIS had also finished its set. The ATLANTIS was moving Northwest of this position. We had just received a report from the BOLD CONTENDER that he had just caught enough tuna to load up, and that the U.S. flag tuna fishing vessel MARY ANTOINETTE come to him so he could transfer excess fish.

That within a half hour of completing that "skunk" set and running to the North, I turned to the West and passed within two miles of the ATLANTIS. I saw the ATLANTIS working on a Yellowfin Tuna school associated with porpoise and I saw him set the net. I also heard Captain Art Ferreira of the ATLANTIS talking on the radio, giving instructions to the "chase boat" operators and telling them and his crew that the school was "boiling with tuna". I then directed my vessel west of the ATLANTIS and within a short while made a set on Yellowfin Tuna associated with porpoise. The set was successful, and I was able to bring aboard 70 tons of Yellowfin Tuna. That while passing the ATLANTIS, I saw the MARY ANTOINETTE coming from my stern, apparently headed in the direction of the BOLD CONTENDER. I noticed two other vessels in the area, the Mexican flag tuna fishing vessel CAL-MEX, and the Panama flag tuna fishing vessel ROYAL STAR, the ex-U.S. flag tuna fishing vessel SUN EUROPA.

That on or about 9 April 1973, I did not see the ATLANTIS, but I did hear a high seas radio conversation between Captain Art Ferreira of the ATLANTIS and one of his code boats. Although Captain Ferreira did converse mostly in code, he did say that he made three "skunk hauls" that day. I assumed from such statement that he was fishing on Yellowfin Tuna schools associated with Whitebelly porpoise. A large number of skunk hauls are common when fishing on Yellowfin Tuna schools associated with Whitebelly porpoise.

That on or about 10 April 1973, I made two sets, catching about 50 tons of Yellowfin Tuna before receiving word from Captain John Zolezzi, Jr. of the MARY ANTOINETTE that he had enough excess tuna for me to load up my vessel. I directed the CAPTAIN JOE MEDINA to a position about 25 miles South South-west from Isla del Cano, Costa Rica, the position of the MARY ANTOINETTE. As I approached this position, I saw the Mexican flag vessel CAL-MEX, and about 8 miles away in a Northwest direction from such position, I saw the ATLANTIS running to the East and then run to the North.

That after loading up my vessel with the tuna given by the MARY ANTOINETTE, I started up the CAPTAIN JOE MEDINA for San Diego. It was just about sunset, I could see a green hull vessel, a Spanish flag tuna fishing vessel up ahead, but it was too dark for me to make an identification.

That on 17 April 1973, the CAPTAIN JOE MEDINA arrived into the Port of San Diego, California, fully loaded with about 1200 tons of Yellowfin Tuna. In the fishing area where I saw the ATLANTIS fishing, schools of tuna were not mixed: there was no Skipjack Tuna in such schools. In my opinion, the ATLANTIS has caught exclusively Yellowfin Tuna, and based upon information, the ATLANTIS had aboard about 650 tons as of 13 April 1973.

That attached hereto is a copy of a Chart H.O. 930 (1963) indicating the positions described above.

Position 1 is the general fishing location of the BOLD CONTENDER and CAPTAIN JOE MEDINA on or about 7 April 1973;

Position 2 is the location on 8 April 1973 when I first saw the ATLANTIS in a set;

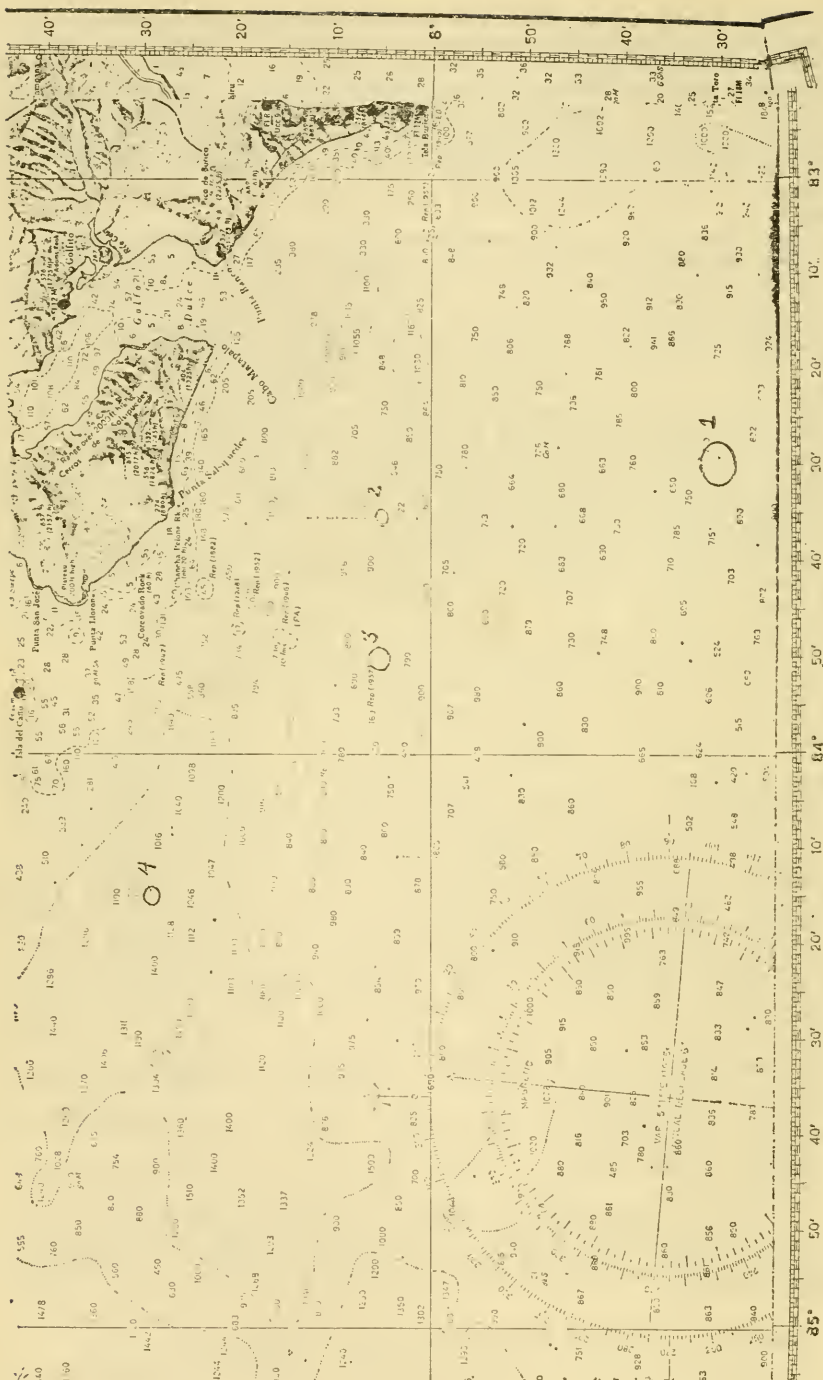
Position 3 is the location on 8 April 1973 where the BOLD CONTENDER was located in making his transfer of fish to the MARY ANTOINETTE;

Position 4 is the location on 10 April 1973 where the MARY ANTOINETTE transferred fish to the CAPTAIN JOE MEDINA and where I last saw the ATLANTIS.

JOE MEDINA, JR.

Subscribed and sworn to me this 20th day of April 1973.

AUGUST J. FELANDO,  
Notary Public.



U.S. DEPARTMENT OF COMMERCE,  
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION,  
NATIONAL MARINE FISHERIES SERVICE,  
Terminal Island, Calif., April 26, 1973.

Mr. AUGUST FELANDO,  
American Tunaboat Association,  
San Diego, Calif.

DEAR AUGIE: Enclosed you will find copies of statements taken from the navigators of *Mary Antoinette* and *Captain Joe Medina*. These statements along with the affidavits supplied by you have been forwarded to our Washington office.

Sincerely,

FREDERICK K. CRAMER,  
Resource Management Administrator.

Enclosures.

EMIL PIRAINO, M/V "CAPT. JOE MEDINA"

AFFIDAVIT

STATE OF CALIFORNIA,  
County of Los Angeles, ss:

I, EMIL PIRAINO, being duly sworn, say:

That I am the Navigator of the U.S. flag tuna fishing vessel CAPTAIN JOE MEDINA, and that during the fishing trip commenced on 21 February 1973, the following events occurred:

That on or about 8 April 1973 while working in an area about 41 miles South Southeast from Isla del Cano, Costa Rica I saw the ATLANTIS in a "set"; they were in the stage of rolling in their net on board. The distance between the ATLANTIS and the CAPTAIN JOE MEDINA was about three (3) miles, and there was no difficulty in making identification with the binoculars. CAPTAIN JOE MEDINA also made a set in this area on a school of Yellowfin Tuna associated with porpoise. We missed the school of fish and porpoise. After completing our set, I noticed that the ATLANTIS had also finished its set. The ATLANTIS was moving Northwest of this position. We had just received a report from the BOLD CONTENDER that he had just caught enough tuna to load up, and that the U.S. flag tuna fishing vessel MARY ANTOINETTE come to him so he could transfer excess fish.

That within a half hour of completing that "skunk" set and running to the North, we passed within two miles of the ATLANTIS. I saw the ATLANTIS working on a Yellowfin Tuna school associated with porpoise and I saw him set the net. CAPTAIN JOE MEDINA passed to the west of the ATLANTIS and within a short while made a set on Yellowfin Tuna associated with porpoise. The set was successful, and we brought aboard approximately 70 tons of Yellowfin Tuna. That while passing the ATLANTIS I noticed two other vessels in the area, the Mexican flag tuna fishing vessel CAL-MEX, and the Panama flag tuna fishing vessel ROYAL STAR, the ex-U.S. flag tuna fishing vessel SUN EUROPA.

That on or about 10 April 1973, we made two sets, catching about 50 tons of Yellowfin Tuna before receiving word from Captain John Zolezzi, Jr. of the MARY ANTOINETTE that he had enough excess tuna for us to load up our vessel. CAPTAIN JOE MEDINA moved to a position about 25 miles South Southwest from Isla del Cano, Costa Rica, the position of the MARY ANTOINETTE. As we approached this position, I saw the Mexican flag vessel CAL-MEX, and about 8 miles away in a Northwest direction from such position. I saw the ATLANTIS running to the East and then run to the North.



That on 17 April 1973, the CAPTAIN JOE MEDINA arrived into the Port of San Diego, California, fully loaded with about 1200 tons of Yellowfin Tuna. In the fishing area where I saw the ATLANTIS fishing, schools of tuna were not mixed; there was no Skipjack Tuna in such schools. In my opinion, the ATLANTIS has caught exclusively Yellowfin Tuna.

That attached hereto is a copy of a Chart H.O. 930 (1963) indicating the positions described above.

Position 1 is the location on 8 April 1973 when I first saw the ATLANTIS in a set;

Position 2 is the location on 8 April 1973 where the BOLD CONTENDER was located in making his transfer of fish to the MARY ANTOINETTE;

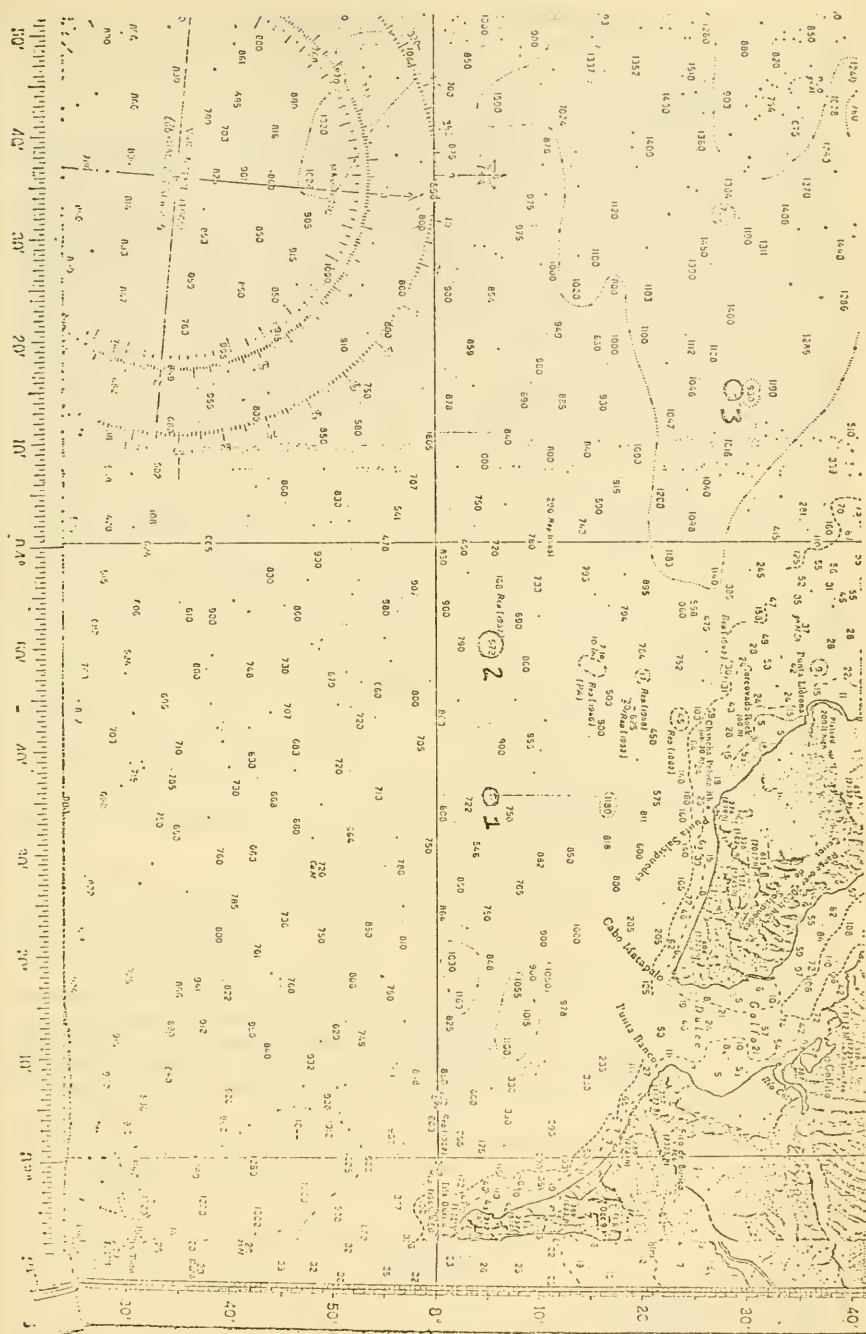
Position 3 is the location on 10 April 1973 where the MARY ANTOINETTE transferred fish to the CAPTAIN JOE MEDINA and where I last saw the ATLANTIS.

EMIL PIRAINO.

Signature witnessed by

GARY R. GAILBREATH,  
Fisheries ENFORCEMENT AGENT,  
National Marine Fisheries Service..

April 25, 1973.



## JOHN ZOLEZZI, M/V "MARY ANTOINETTE"

## AFFIDAVIT

STATE OF CALIFORNIA

*County of San Diego, ss:*

I, JOHN ZOLEZZI, JR., being duly sworn, say:

That I am the Master and Managing Owner of the U.S. flag tuna fishing vessel MARY ANTOINETTE, and that during the fishing trip commenced on 28 February 1973, the following events occurred:

That on 8 April 1973, I received a radio call from the U.S. flag tuna fishing vessel BOLD CONTENDER to come to such vessel to receive some tuna. The BOLD CONTENDER had finished off its load and has some excess tuna for transfer to me. The BOLD CONTENDER reported its position as 8 degrees, 05 minutes North Latitude; 83 degrees, 50 minutes West Longitude, or about 38 miles South or 175 degrees True from Isla del Cano, Costa Rica. As the MARY ANTOINETTE preceded to the position of the BOLD CONTENDER, it passed the ATLANTIS. The time of passage was about noon on 8 April 1973, and the position was about 41 miles South, Southeast or 155 degrees True from Isla del Cano, Costa Rica. (8 degrees, 05 minutes North Latitude; 83 degrees, 35 minutes West Longitude.) The Dutch flag fishing vessel ATLANTIS had just completed the encirclement and was in the process of pursing the net; the chase boats were alongside the vessel. Two other foreign flag vessels were in the area, the Mexican flag tuna fishing vessel CAL-MEX, and the Panama flag tuna fishing vessel ROYAL STAR, the ex-U.S. flag tuna fishing vessel SUN EUROPA. The U.S. flag vessel CAPTAIN JOE MEDINA was also in this area.

That towards sunset on 8 April 1973, just after completing our work with the BOLD CONTENDER, and while we were nearby such vessel at the position of about 38 miles South or 175 degrees True from Isla del Cano, Costa Rica, I again saw the ATLANTIS. On this occasion, the ATLANTIS was travelling.

That on Monday, 9 April 1973, while the MARY ANTOINETTE was fishing for tuna, I heard the skipper of the ATLANTIS, Art Ferreira, talking to his chase boats on the radio. The conversations dealt with instructions and information involved in the setting of the net with chase boats on a school of tuna. The conversations were on frequency 19A, VHF. Because of my ability to clearly receive these radio transmissions, I knew that the ATLANTIS was nearby my vessels' position, which was about 28 miles South, Southwest or 215 degrees True from Isla del Cano, Costa Rica (08 degrees, 10 minutes North Latitude; 84 degrees, 10 minutes West Longitude).

That on Tuesday, 10 April 1973, after loading up the MARY ANTOINETTE with tuna, I headed my vessel to Puntarenas, Costa Rica. While on this course, I saw the ATLANTIS in a set. The time of passage was at sunset, and the position of passage was about 25 miles South, Southwest or 225 degrees True from Isla del Cano, Costa Rica (08 degrees, 30 minutes, North Latitude, 84 degrees, 15 minutes West Longitude).

The MARY ANTOINETTE arrived in the port of San Diego on Wednesday, April 19, 1973. The vessel has a load of about 620 short tons of Yellowfin tuna. The schools of tuna associated with white belly porpoise caught by fishing vessels in the area fished by the ATLANTIS on the dates I refer to in this Affidavit are composed of all Yellowfin tuna, no Skipjack tuna are in such schools of tuna.

JOHN ZOLEZZI, JR.

Subscribed and sworn to me this 19th day of April 1973.

AUGUST J. FELANDO,

*Notary Public.*

DAVID SALMON, M/V "MARY ANTOINETTE"

## AFFIDAVIT

STATE OF CALIFORNIA,

*County of Los Angeles, ss:*

I, DAVID ANTHONY SALMON, being duly sworn, say:

That I am the Navigator of the U.S. flag tuna fishing vessel MARY ANTOINETTE, and that during the fishing trip commenced on 28 February 1973, the following events occurred:



That on 8 April 1973, a radio call was received from the U.S. flag tuna fishing vessel BOLD CONTENDER to come to such vessel to receive some tuna. The BOLD CONTENDER had finished off its load and had some excess tuna for transfer to MARY ANTOINETTE. The BOLD CONTENDER reported its position as 8 degrees, 05 minutes North Latitude; 83 degrees, 50 minutes West Longitude, or about 38 miles South or 175 degrees True from Isla del Cano, Costa Rica. As the MARY ANTOINETTE proceeded to the position of the BOLD CONTENDER, it passed the ATLANTIS. The time of passage was about noon on 8 April 1973, and the position was about 41 miles South, Southeast or 155 degrees True from Isla del Cano, Costa Rica. (8 degrees, 05 minutes North Latitude; 83 degrees, 35 minutes West Longitude.) The Dutch flag fishing vessel ATLANTIS had just completed the encirclement and was in the process in pursuing the net; the chase boats were alongside the vessel. Two other foreign flag vessels were in the area, the Mexican flag tuna fishing vessel CAL-MEX and the Panama flag fishing vessel ROYAL STAR, the ex-U.S. flag tuna fishing vessel SUN EUROPA. The U.S. flag vessel CAPTAIN JOE MEDINA was also in this area.

That towards sunset on 8 April 1973, just after completing our work with the BOLD CONTENDER, and while we were nearby such vessel at the position of about 38 miles South or 175 degrees True from Isla del Cano, Costa Rica, I again saw the ATLANTIS. On this occasion, the ATLANTIS was travelling.

That on Tuesday, 10 April 1973, while on a course to Puntarenas, Costa Rica, I saw the ATLANTIS in a set. The time of passage was at sunset, and the position of passage was about 25 miles South, Southwest or 225 degrees True from Isla del Cano, Costa Rica (08 degrees, 30 minutes, North Latitude, 84 degrees, 15 minutes West Longitude).

The MARY ANTOINETTE arrived in the port of San Diego on Wednesday, April 19, 1973. The vessel has a load of about 620 short tons of Yellowfin tuna. The schools of tuna associated with white belly porpoise caught by fishing vessels in the area fished by the ATLANTIS on the dates I refer to in this Affidavit are composed of all Yellowfin tuna, no Skipjack tuna are in such schools of tuna.

DAVID ANTHONY SALMON.

April 23, 1973.

Signature witnessed by

GARY R. GAILBREATH,  
Enforcement and Surveillance Division,  
National Marine Fisheries Service.

LARRY PERREIRA, M/V "MARCO POLO"

#### AFFIDAVIT

STATE OF CALIFORNIA,

County of San Diego, ss:

I, LARRY PERREIRA, being duly sworn, say:

That I have just completed a tuna fishing trip abroad the F/V MARCO POLO, serving in the capacity as Navigator.

That I am licensed by the U.S. Coast Guard as commercial fishing vessel MASTER, 2000 gross tons, and that I have been a commercial tuna fisherman abroad U.S. flag tuna vessels operating from San Diego for the past 12 years.

On April 24, 1973, while the F/V MARCO POLO was unloading at Star-Kist Foods, Inc. cannery in San Pedro, California, I was approached by Mr. Antonio Dominques. He identified himself to me as the Managing Owner of the Spanish Flag vessels SOL DE IMPANEMA and the SOL DE COPACABANA. He offered me a job as Master of either one of these vessels. During the conversation that lasted about 1½ hours, he stressed the point that I could fish the Spanish flag vessel during the Closed Season without restriction. He explained that this would be a big advantage to me since I was just getting started. He said that the Tuna Commission didn't believe it was necessary for Spain, at this time to obey the quota because of its few vessels.

On Saturday, April 28, 1973, I called Panama, to talk to Mr. Antonio Dominques. I wanted to say that I was undecided. Mr. Dominques was not at home. About one hour later, Mr. Luis San Miguel called me from Panama. He said that he worked for Mr. Dominques and was his representative for the two vessels in Panama. He explained that Mr. Dominques was not at home,

that he was returning my call. He said that the SOL DE INPANEMA had just left Panama for a shipyard in Lima, Peru. He told me that the SOL DE COPACABANA was arriving in Panama around the 8th or 9th of May to unload some fish. I told him that I wanted to examine the vessel they wanted me to run. Mr. San Miguel tried to persuade me to operate the SOL DE COPACABANA while the SOL DE INPANEMA was under repair in Lima for about 5 to 6 weeks. Mr. San Miguel strongly suggested that since I could operate the SOL DE COPACABANA without worrying about the Tuna Commission regulations inside the Regulatory Area, I could probably pick up 500 to 600 tons, also see how the rig operates and wait for the repaired and improved SOL DE INPANEMA. I told him that I couldn't do this because of personal reasons, my sister's husband had just died and I was handling the problems associated with this unexpected death in the family. I still insisted that I wasn't interested in the SOL DE COPACABANA, that I wanted to inspect the SOL DE INPANEMA. He told me that he would contact Mr. Dominques. On the following Monday, April 30, 1973, I talked with Mr. Dominques. I told him that I wanted to go to Lima to inspect the SOL DE INPANEMA. Mr. Dominques wanted me to wait, that he would forward tickets after making a later contact. He said he would call me later, but I have not received a call from him as of this date.

LARRY PERREIRA.

Subscribed and sworn to me this 8th day of May 1973

AUGUST J. FELANDO,  
Notary Public.

JOHN MURICIO, M/V "BALBOA, NEPTUNE"

#### AFFIDAVIT

STATE OF CALIFORNIA,  
County of San Diego, ss:

I, JOHN MAURICIO, being duly sworn, say:

That as the Managing Owner of the U.S. flag tuna fishing vessels BALBOA and NEPTUNE, I was required for a variety of reasons to perform certain work in Panama and in Balboa, Panama Canal Zone relating to the needs of such vessels during the months of February and March, 1973.

That during such trips to Panama City and Balboa, I had numerous conversations with an individual known as "William" or "Willy", introduced to me as a part owner of two Spanish flag tuna fishing vessels called the SOL DE IPANEMA and the SOL DE COPACABANA. Each of these vessels, which were built in Bilboa, Spain, have frozen tuna carrying capacity of about 1,500 short tons.

That during these conversations, I advised "Willy" that I had heard that Spain was going to be a member of the Inter-American Tropical Tuna Commission (IATTC). He answered that "Oh, no, we are going to reject such membership as long as we can maybe for three (3) or four (4) years. In this way, we can take advantage of as much unregulated fishing for our vessels as possible."

That during these conversations, I asked "Willy" how his vessels had performed in 1972. He answered that one vessel had made a very successful trip during the closed season just before Christmas, that the tuna was sold pursuant to an agreement with Star-Kist Foods, and that "Manolo", the Skipper of the Spanish flag tuna fishing vessel COSTA DE MARFIL, an 800 ton capacity Seiner, had also a successful year-end trip and that he had sold its tuna to a Japanese buyer, that all of its fish is transshipped aboard freezer vessels anchored off Taboga Island, Panama, for shipment to the buyer.

JOHN MAURICIO.

Subscribed and sworn to me this 19th day of April 1973, in San Diego, California.

C. C. PAYNE.  
Notary Public.

LOU L. BRITO

#### AFFIDAVIT

STATE OF CALIFORNIA,  
County of San Diego, ss:

I, LOU BRITO, being duly sworn, say:

That on or about April 11, 1973, in the City of San Diego, State of California, I met Mrs. Art Ferreira, the wife of the Fish Captain aboard the Dutch

Flag tuna fishing vessel ATLANTIS. This meeting took place in the law offices of White, Price, Peterson & Robinson, 2330 Southern California First National Building, San Diego.

That in such law offices, Mrs. Art Ferreira advised me that she had just arrived in San Diego from Panama, that she had been aboard the ATLANTIS while it was unloading in Puntarenas, Costa Rica, that the unloading of the ATLANTIS had only taken six (6) days, that since no diesel fuel was available to the ATLANTIS in Puntarenas, it was necessary to seek fuel in the Panama Canal Zone, that she was aboard the ATLANTIS during its two day voyage from Costa Rica to Panama, that on the first day of such voyage, the ATLANTIS caught about 35 tons of tuna, and that on the second day of such voyage, the ATLANTIS caught another 35 tons of tuna, or a total of 70 tons on the two day trip from Puntarenas, Costa Rica, to Balboa, Panama Canal Zone, that while in Panama, she made arrangements to fly back to San Diego and the ATLANTIS made preparations to return to sea, that she was in the law offices to see Attorney Byron White on tax matters.

LOU BRITO.

Subscribed and sworn to before me this 19th day of April 1973, in San Diego, California.

AUGUST J. FELANDO  
Notary Public.

AUGUST FELANDO

#### AFFIDAVIT

STATE OF CALIFORNIA,  
County of San Diego, ss:

I, AUGUST J. FELANDO, being duly sworn, say:

That based upon records maintained on a regular basis by the American Tunaboat Association under my supervision, the ATLANTIS departed on its maiden fishing voyage from Panama on or about 6 January 1973, entered the port of Puntarenas, Costa Rica, on or about 24 March 1973, to unload approximately 1,230 short tons of tuna for transshipment to Puerto Rico; that the carrying capacity of the ATLANTIS is about 1600 short tons of tuna; that on or about 5 April 1973, the ATLANTIS commenced its second tuna fishing trip from the port of Puntarenas, Costa Rica, interrupting such trip with an entry into the port of Balboa, Panama Canal Zone, for purposes of taking on fuel and other supplies;

That based upon information received by me on 10 April 1973, from members of the American Tunaboat Association, the ATLANTIS caught about 70 short tons of tuna, practically all Yellowfin tuna, during its trip from Puntarenas, Costa Rica, to Balboa, Panama Canal Zone, off the coast of Panama; that based upon information received 11 April 1973 by me from members of the American Tunaboat Association, the ATLANTIS, after departing Balboa, returned to fish for tuna in an area about 70 to 100 miles off Pta. Mariato, Panama, and that it had caught and had aboard about 450 short tons of tuna, practically all Yellowfin tuna.

AUGUST FELANDO.

Subscribed and sworn to before me this 11th day of April 1973, in San Diego, California.

C. C. PAYNE  
Notary Public.

MELVIN MORGAN, M/V "CALYPSO"

#### AFFIDAVIT

STATE OF CALIFORNIA,  
County of San Diego, ss:

I, Melvin Morgan, duly sworn, say:

During the first week of October, I was in Balboa and Panama City for the purpose of inspecting the progress of the tuna net under construction in Casa-Mar, Balboa for the CALYPSO.

While at Casa-Mar, I heard on the High Seas radio located there, that the Spanish flag vessel—a big 1700 ton tuna vessel—was coming in for unloading at Tobago Island. The Fish Shipper of this vessel was Carlos Luz, and he was on the radio. I learned from Roy Williams, in charge of unloading for Panama Agencies, that this Spanish Seiner had about 600-700 tons of fish. In Balboa, the Spanish flag vessel MARAFIN, was tied up at Pier 15. The MAR-



AFIN had auxillary problems and was in port for repair. This vessel had about 300-400 tons of fish, about 80% yellowfin the rest skipjack. I was told by the fellows on the vessel that they caught the fish at about 99° West longitude and 10° North latitude. I was also told that they were unloading for a Japanese Company under consignment called MITSUI. I know that Carlos Luz was fishing for STAR KIST.

As I travelled back to San Diego via Pan Am, I met three crewmembers who fished with Carlos Tuz on the Spanish vessel called either the CAPACABANA or the INPENEMA—I am sure that Carlos operated the COPACABANA. Two of these crewmembers were young portuguese fellows living in San Diego who I did not know personally, but the other fellow was known to me very well. He is known in San Diego as Joe "the Wop." He told me that Carlos started the trip generally off the coast of Ecuador and off the Galapagos. He said they caught 90 tons of yellowfin off Guyanil Bank and several hundred tons of skipjack in Galapagos. Carlos heard good reports on fishing off Tehautepec (99 West/10°N), from the Costa de Marafin, the other Spanish vessel. Carlos caught fish and then had to return to Panama for fuel only. Joe the Wop told me that they were fishing on porpoise schools, with 40 to 60 lb yellowfin. Joe told me that they had to dump about 80 tons of Skipjack that was caught off Galapagos because of the poor condition of the fish.

I was told that the MARAFIN was fishing on school fish, and that the schools were 20% to 85% Yellowfin. About 25 lb fish. He said that the MARAFIN had a lot of trouble with his net, and in one set they caught about 300 tons and lost a greater part of these fish. I was led to believe that the "net" was incorrectly "hung" and that this was the reason for a great loss of fish.

As to the Canadian boats, they were suppose to have about 200 tons of fish each, and they were scheduled for unloading in Panama about the 27th of October listening to the radio reports that I heard, they were porpoise fishing and complaining that the schools carried very little tuna. Later on, I don't know exactly what they did in picking up additional fish. But, I was led to the impression that the boats had caught mostly yellowfin up to the time I left Panama.

Friday, November 3, 1972.

MEL MORGAN.

[Whereupon, at 7:05 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

# FISH AND WILDLIFE MISCELLANEOUS

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## Commercial Fisheries

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MONDAY, JUNE 11, 1973

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON MERCHANT MARINE AND FISHERIES  
SUBCOMMITTEE ON FISHERIES AND WILDLIFE  
CONSERVATION AND THE ENVIRONMENT  
*Washington, D. C.*

The subcommittee met, pursuant to call, in room 1334, Longworth Office Building, at 10:10 a.m., Hon. Glenn M. Anderson, presiding.

Mr. ANDERSON [presiding]. The meeting of the Subcommittee on Fisheries and Wildlife Conservation and the Environment will come to order.

This morning the subcommittee will hear a number of bills designed to provide assistance to our U.S. fishing industry.

The first group of bills would recognize the present poor condition in which our domestic fishing industry finds itself. For instance, since the 1940's, the United States has slipped from first to sixth place among the leading fishing nations of the world, being out-ranked by Peru, Japan, the People's Republic of China, Russia, and Norway, respectively. Also, we have seen the share of the market taken by imported fish jump from 33 percent in 1957 to a high of 76 percent in 1969, and now it is running about 66 percent.

One of the primary reasons for the decline in domestic production can be attributed in general to an old and obsolete fishing fleet. For example, about 60 percent of our fishing vessels are more than 16 years old, 27 percent more than 27 years old, and a number of vessels are over 40 years old. Also, considerable blame for the depressed state of our fisheries can be attributed to the increased competition from foreign vessels fishing off of our coastal shores.

The bills to be heard today take into consideration these adverse factors and declare it to be a policy of the Congress to see that all steps necessary are taken to assist in strengthening this industry and to provide adequate protection for our coastal fisheries against excessive foreign fishing.

In addition, the bills would declare it to be a policy of the Congress to encourage, support, and assist the several States in the conservation and management of fisheries resources within their territorial waters. The bills also would commend Federal programs designed to improve the protection, enhancement, and scientific management of all U.S. fisheries, both coastal and distant.

The bills that call for a national policy with respect to supporting the U.S. fishing industry are as follows: H. Con. Res. 157 by Mr.

Treen; H. Con. Res. 170 by Mr. Lott; H. Con. Res. 173 by Mr. Treen, and 21 other members of the House; H. Con. Res. 229 by Mr. Treen and 17 other members of the House; and H. Con. Res. 238 by Mr. Treen and Mrs. Boggs. Also to be heard today is a similar bill, S. Con. Res. 11, introduced by Senator Eastland and 43 other members of the Senate, and which passed the Senate on June 1 of this year.

Another bill to be heard that would assist the U.S. fishing industry is H.R. 2283, introduced by Mr. Dingell, Mr. Downing, Mr. McCloskey, Mr. Murphy of New York, and the present occupant of the Chair.

This legislation would amend the 1966 Contiguous Fisheries Zone Act to require, within 2 years from the date of enactment of this legislation, the charting of official large-scale maps of the contiguous fisheries zone using the straight baseline method for measuring the breadth of the territorial sea in accordance with the provisions of the Convention on the Territorial Sea and the Contiguous Zone.

Let the bills and department reports appear in the hearing record at this point.

[The bills and departmental reports follow:]

[H. Con. Res. 157, H. Con. Res. 170, H. Con. Res. 173, H. Con. Res. 229, H. Con. Res. 230, H. Con. Res. 238, 93d Cong, first sess.]

#### CONCURRENT RESOLUTIONS

Whereas the position of the United States in world fisheries has declined from first to seventh place among the major fishing nations;

Whereas there has been a continuing decline in domestic production of food fish and shellfish for the last five years;

Whereas our domestic fishing fleet in many areas has become obsolete and inefficient;

Whereas intensive foreign fishing along our coasts has brought about declines in stocks of a number of species with resulting economic hardship to local domestic fishermen dependent upon such stocks;

Whereas rising costs and extremely high insurance rates have made fishing uneconomic in some areas even when stocks of fish and shellfish are at normal levels;

Whereas assistance to fishermen is very limited as contrasted to Federal aid to industrial, commercial, and agricultural interest;

Whereas United States fishermen cannot successfully compete against imported fish products in the market because a number of foreign fishing countries subsidize their fishing industry to a greater extent;

Whereas some 60 per centum of the seafood requirements of the United States is being supplied by imports;

Whereas the United States fisheries and fishing industry is a valuable natural resource supplying employment and income to thousands of people in all of our coastal States;

Whereas our fisheries are beset with almost unsurmountable production and economic problems; and

Whereas certain of our coastal stocks of fish are being decimated by foreign fishing fleets: Now, therefore, be it

*Resolved by the House of Representatives (the Senate concurring), That it is the policy of the Congress that our fishing industry be afforded all support necessary to have it strengthened and all steps be taken to provide adequate protection for our coastal fisheries against excessive foreign fishing.*

Sec. 2. The Congress also recognizes, encourages, and intends to support the key responsibilities of the several States for conservation and scientific management of fisheries resources within United States territorial waters; and in this context the Congress particularly commends Federal programs designed to improve coordinated protection, enhancement, and scientific management of all United States fisheries, both coastal and distant, including presently successful Federal aid programs under the Commercial Fisheries, Research and Development Act of 1964, and the newly developing Federal-State fisheries management programs.



U.S. DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
Washington, D.C. April 18, 1973.

HON. LEONOR K. (MRS. JOHN B.) SULLIVAN,  
*Chairman, Committee on Merchant Marine and Fisheries,*  
*House of Representatives,*  
*Washington, D.C.*

DEAR MADAME CHAIRMAN: By letter of March 21, 1973, you requested the views of this Department on H. Con. Res. 157, a resolution "Relating to the United States fishing industry."

Because this legislation pertains primarily to commercial fisheries and because the Federal responsibility therefore has been transferred to the Department of Commerce pursuant to Reorganization Plan No. 4 of 1970, this Department has no special interest in H. Con. Res. 157. Accordingly, we will not plan to make comment unless, in light of the foregoing, your Committee requests us to do so.

Sincerely yours,

JOHN KYL,  
*Secretary of the Interior.*

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DEPARTMENT OF STATE,  
Washington D.C. June 11, 1973.

HON. LEONOR K. SULLIVAN,  
*Chairman, Committee on Merchant Marine and Fisheries,*  
*House of Representatives,*  
*Washington, D.C.*

DEAR MADAM CHAIRMAN: Your letter of March 21 requested the Department's views on H. CON. RES. 157, a Concurrent Resolution relating to the United States fishing industry.

The Department endorses the Congressional policy of strengthening the U.S. fishing industry and shares the view that all fisheries should be protected from excessive exploitation. The Department is continuing its efforts in both bilateral and multilateral fora to promote the rational and effective management of all marine resources and in particular the management of coastal and high seas fisheries of value to American commercial and sport fishermen.

The United States recognizes that under existing international law, states may exercise exclusive jurisdiction over fisheries, including fisheries management, only to a distance of twelve miles from their shores. While maintaining this position, the United States has proposed in the United Nations Seabed Committee that coastal states be given authority over coastal species as far offshore as the stocks range for the purposes of effective management and conservation.

The Department believes that Section 1 suggests the possible implementation of unilateral action and, therefore, recommends that Section 1 be modified by adding the words "consistent with international law."

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

Sincerely,

MARSHALL WRIGHT,  
*Assistant Secretary for Congressional Relations.*

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[S. Con. Res. 11, 93d Cong., first sess.]

Whereas the position of the United States in world fisheries has declined from first to seventh place among the major fishing nations;

Whereas there has been a continuing decline in domestic production of food fish and shellfish for the last five years;

Whereas our domestic fishing fleet in many areas has become obsolete and inefficient;

Whereas intensive foreign fishing along our coasts has brought about declines in stocks of a number of species with resulting economic hardship to local domestic fishermen dependent upon such stocks;

Whereas rising costs and extremely high insurance rates have made fishing uneconomic in some areas even when stocks of fish and shellfish are at normal levels;

Whereas assistance to fishermen is very limited as contrasted to Federal aid to industrial, commercial, and agricultural interests;

Whereas United States fishermen cannot successfully compete against imported fish products in the market because a number of foreign fishing countries subsidize their fishing industry to a greater extent;

Whereas some 60 per centum of the seafood requirements of the United States is being supplied by imports;

Whereas the United States fisheries and fishing industry is a valuable natural resource supplying employment and income to thousands of people in all of our coastal States;

Whereas international negotiations so far have proved incapable of obtaining timely agreement on the protection of threatened species of fish;

Whereas our fisheries are beset with almost insurmountable production and economic problems; and

Whereas certain of our coastal stocks of fish are being decimated by foreign fishing fleets: Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring),* That it is the policy of the Congress that our fishing industry be afforded all support necessary to have it strengthened, and all steps be taken to provide adequate protection for our coastal fisheries against excessive foreign fishing, and further that the Congress is fully prepared to act immediately to provide interim measures to conserve overfished stocks and to protect our domestic fishing industry.

SEC. 2. The Congress also recognizes, encourages, and intends to support the key responsibilities of the Several States for conservation and scientific management of fisheries resources within United States territorial waters; and in this context the Congress particularly commends Federal programs designed to improve coordinated protection, enhancement, and scientific management of all United States fisheries, both coastal and distant, including presently successful Federal-aid programs under the Commercial Fisheries Research and Development Act of 1964, and the newly developing Federal-State fisheries management programs.

Passed the Senate June 1, 1973.

Attest:

FRANCIS R. VALEO,  
*Secretary.*

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DEPARTMENT OF STATE,  
*Washington, D.C., June 11, 1973.*

HON. LEONOR K. SULLIVAN,  
*Chairman, Committee on Merchant Marine and Fisheries,  
House of Representatives,  
Washington, D.C.*

DEAR MADAM CHAIRMAN: Your letter of June 5 requested the Department's views on S. CON. RES. 11, a Concurrent Resolution to express a national policy with respect to support of the United States fishing industry.

The Department endorses the Congressional policy of strengthening the U.S. fishing industry and shares the view that all fisheries should be protected from excessive exploitation. The Department is continuing its efforts in both bilateral and multilateral fora to promote the rational and effective management of all marine resources and in particular the management of coastal and high seas fisheries of value to American commercial and sport fishermen.

The United States recognizes that under existing international law, states may exercise exclusive jurisdiction over fisheries, including fisheries management, only to a distance of twelve miles from their shores, absent broad international agreement. While maintaining this position, the United States has proposed in the United Nations Seabed Committee that coastal states be given authority over coastal species as far offshore as the stocks range for the purposes of effective management and conservation.

The United States fisheries position has been incorporated in a revised fisheries article which we are hopeful will be adopted by the Law of the Sea Conference. This Conference will treat a wide range of ocean problems in addition to fisheries. The proposals made by the United States for the Conference are beyond the rights we now possess over fish under present international law.

Any unilateral extension of fisheries jurisdiction beyond twelve miles would not only be contrary to international law, but might also encourage unilateral claims by other countries. Such an extension might compel us to recognize extended fisheries zones off the coasts of other countries, thereby prejudicing our distant water fishing interests. Moreover, other U.S. interests might be

prejudiced, including high seas navigational freedoms, since other nations might make more inclusive jurisdictional claims. The best way to assure that coastal state rights over fisheries will not prejudice navigation and other U.S. interests is by broad multilateral agreement on the precise nature and content of those rights.

It is our opinion that any fisheries legislation extending U.S. fisheries jurisdiction would seriously impede the process of reaching international agreement at the Law of the Sea Conference. Other countries might be led to believe that the way to protect their perceived interests is to make unilateral claims and then seek to have such claims ratified by agreement at the Conference.

Accordingly, the Department suggests in Section 1, line 7, the deletion of the word "immediately" and insertion in lieu thereof the phrase "consistent with international law."

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

Sincerely,

MARSHALL WRIGHT,  
*Assistant Secretary for Congressional Relations.*

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[H. R. 2283, 93 Cong., first sess.]

A BILL To amend the Act entitled "An Act to establish a contiguous fishery zone beyond the territorial sea of the United States", approved October 14, 1966, to require that the method of straight baselines shall be employed for the purposes of determining the boundaries of such fishery zone, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 2 of the Act entitled "An Act to establish a contiguous fishery zone beyond the territorial sea of the United States", approved October 14, 1966 (16 U.S.C. 1092), is amended by inserting "(a)" immediately after "Sec. 2." and by adding at the end thereof the following new subsection:

"(b) for the purposes of this section, the baseline for measuring the breadth of the territorial sea shall be established in accordance with the provisions of the Convention on the Territorial Sea and the Contiguous Zone which came into force on September 10, 1964, and, where applicable, the method of straight baselines shall be employed in drawing the baseline pursuant to article 4 of such convention."

SEC. 2. Such Act of October 14, 1966, is amended by adding at the end thereof the following new sections:

"SEC. 5. Within the two-year period beginning on the date of enactment of this section, the baseline for the purpose of charting the contiguous fishery zone, described in subsection (b) of section 2 of this Act, shall be marked on large-scale charts officially recognized by the United States.

"SEC. 6. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act."

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DEPARTMENT OF STATE,  
*Washington, D.C., June 11, 1973.*

HON. LEONOR K. SULLIVAN,  
*Chairman, Committee on Merchant Marine and Fisheries,*  
*House of Representatives,*  
*Washington, D.C.*

DEAR MADAM CHAIRMAN: Your letter of March 21 requested the Department's views on H. CON. RES. 157, a Concurrent Resolution relating to the United States fishing industry.

The Department endorses the Congressional policy of strengthening the U.S. fishing industry and shares the view that all fisheries should be protected from excessive exploitation. The Department is continuing its efforts in both bilateral and multilateral fora to promote the rational and effective management of all marine resources and in particular the management of coastal and high seas fisheries of value to American commercial and sport fishermen.



The United States recognizes that under existing international law, states may exercise exclusive jurisdiction over fisheries, including fisheries management, only to a distance of twelve miles from their shores. While maintaining this position, the United States has proposed in the United Nations Seabed Committee that coastal states be given authority over coastal species as far offshore as the stocks range for the purposes of effective management and conservation.

The Department believes that Section 1 suggests the possible implementation of unilateral action and, therefore, recommends that Section 1 be modified by adding the words "consistent with international law."

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

Sincerely,

MARSHALL WRIGHT,  
*Assistant Secretary for Congressional Relations.*

Mr. ANDERSON. Our first witness this morning is one of our colleagues, the Honorable William S. Cohen.

### STATEMENT OF HON. WILLIAM S. COHEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MAINE

Mr. COHEN. Thank you.

Mr. Chairman, it is with great privilege and honor that I speak today in behalf of H. Con. Res. 173—to develop a sound and coherent national fishing policy. This measure, I believe, will provide the foundation and guidance for the strengthening and restoration of our currently beleaguered fishing industry. It focuses on the critical decline of our coastal water resources and draws attention to the scope and seriousness of the situation.

Gentlemen, at issue is whether the oceans will be used rationally and equitably or whether they will become an arena of unrestrained exploitation. At issue is whether an invaluable and irreplaceable asset—our oceans—will prosper or whether they will collapse under the pressure of uncontrollable encroachment, destruction of habitat, pollution, and negligence.

If our fish, our cod, herring, and lobster, were inexhaustable; if our lobster stocks were thriving; if international cooperation was as sound in practice as it is in professed concern; and if the quality of our ocean resources was assured for present and future generations—then there would be no need for this resolution. But as we all know, this is not the case.

Our haddock, cod and herring are not inexhaustable; our lobster stocks are in jeopardy; international cooperation has not proved entirely successful and the life of our ocean resources is not assured for future generations.

We only have to look at what is being deservedly called "the cod war" to see where we are heading and what the future portends. Currently, Iceland is trying to drive British vessels outside a 50-mile ring around her shores. And her reasons are quite clear:

Simply, that in 1965 the Icelanders' herring catch was more than 700,000 tons. Last year the catch dropped to a mere 60,000 tons. This decline has forced Icelandic fishermen to go after the deeper running haddock and cod—whose numbers are likewise dwindling.

We must not fail to learn from the lessons of the "cod war." For if the United States does not formulate and follow through with a rational program to increase our diminishing stocks and revitalize our industry, then we must accept the fact that in 5 years we will probably rank 10th among major fishing nations; that in 5 years our commercial fishing fleet will be in shambles; that in 5 years certain coastal species of fish will be near extinction; that in 5 years we will be importing 80 percent of the fish we consume; and that in 10 years we may not have a fishing industry.

H. Con. Res. 173 is simply a statement of policy. But the passage of this resolution will provide the direction and future of our fishing industry.

Under its directive we shall go to the experts—the canners, the consumers, the fishermen—and ask them what it will take to resurrect the industry. We will ask them to give us the facts from their particular vantage point; because they are most familiar with the day-to-day problems they must face. And from their input at the local level we can develop the kind of legislation that will work.

Mr. Chairman, I urge this committee to consider carefully today the far-reaching merits of this excellent resolution.

Thank you.

Mr. ANDERSON. Thank you, Mr. Cohen.

Are there any questions from members?

Mr. STUDDS. Mr. Chairman and Mr. Cohen, as you know, I am a cosponsor with you of this resolution, although I must say its passage would strike me at this point as more of a symbolic statement, a symbolic victory.

There is no real substance other than a statement of Government intention to support the fishing industry, is that your understanding?

Mr. COHEN. It does that, but it does another thing.

One of the principal features of this particular resolution I feel is that it ties in with the public discontent, disenchantment with governmental remoteness and one of the vital aspects of this resolution is that this committee which I would hope would be composed of some congressional members would go out into the district to meet with the particular fishermen to get their input.

It is very difficult for each of us to represent each of our respective constituencies by bringing their viewpoint here and have it sifted through all the others.

This would be an opportunity to go and learn firsthand and talk with fishermen and get their input. It is much more than a symbolic gesture.

Mr. STUDDS. I think your figures are somewhat optimistic, five years to danger, and ten to extinction.

Mr. COHEN. That is on the optimistic side.

Mr. STUDDS. Thank you.

Mr. ANDERSON. Any further questions or comments?

Thank you, Mr. Cohen.

At this time we will hear from the Honorable David C. Treen.

**STATEMENT OF HON. DAVID C. TREEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF LOUISIANA; ACCOMPANIED BY BILL SIMPSON, LEGISLATIVE ASSISTANT TO SENATOR JAMES EASTLAND; AND JOE COLSON, EXECUTIVE DIRECTOR, GULF STATES MARINE FISHERIES COMMISSION**

Mr. TREEN. Thank you, Mr. Chairman.

It is an honor to be able to testify for the first time before my own committee.

I have with me at the table on my right, Mr. Joe Colson, who is executive director, Gulf States Marine Fisheries Commission, one of our three marine commissions in the Nation, and on my left is Mr. Bill Simpson, legislative assistant to Senator Eastland; the Senator being the author of a similar resolution on the Senate side which has 44 co-sponsors and which recently passed the Senate.

I have copies of my statement before the members of the committee and I will go over it briefly leaving out perhaps some parts in the interest of time.

The subject before us this morning is not only one of the most important issues facing the American fishing industry today, but it is also an issue which will have much impact on the future of our Nation as a whole. As such, the need for a healthy and vital U.S. commercial fishing industry must concern each and everyone of us.

As a member of the Merchant Marine and Fisheries Committee, I have become increasingly aware of the great potential of our American commercial fishing industry—and of the inadequate attention which Government has paid to developing that potential.

I am not one of those who believes that every worthwhile cause must have a lot of the taxpayers' dollars thrown at it, and I have observed with dismay the tendency of some industries to pay more attention to procuring Federal support than to running competitive enterprises. I do feel, however, that when a domestic industry has legitimate interests which may be affected by negotiations between the United States and other governments, those interests ought to be protected. American citizens engaged in international commerce have a right to look to their Government to mitigate the adverse effects of actions by other nations.

Equally, there are domestic problems, research and development, for example, confronting our fishermen and States which demand regional, or national solutions. And I believe the Federal Government can be instrumental in helping the States to coordinate programs designed to encourage a strong fishing industry.

We have known for some time the almost unlimited possibilities offered by the sea as a source of food for the world's growing population. It has been estimated that the present annual world catch, which has doubled in the last 10 years, could be trebled again without depleting future world resources.

Here, I am talking about the total fish catch and not any individual species because some of them are in trouble due to overfishing.

What is lacking is the technology and the industrial muscle to realize the full potential of these resources. Where technological advances have been made, it has frequently resulted from the efforts and the scientific expertise of Americans. But all too frequently it



has been the commercial fisheries of other nations—Peru, Japan, the Soviet Union, Mainland China and others—who have capitalized on the American discoveries, with the enthusiastic and magnificent backing of their governments. Meanwhile, the United States has dropped to sixth in worldwide production of fish products, yet our consumption has increased along with our balance-of-payments deficit.

Incidentally, Mr. Chairman, the original resolution said we were seventh in worldwide production. At my insistence we engaged in some research to make sure of that and we found that the United States is sixth and not seventh. The seventh was stated in the initial resolution on the Senate side and was picked up from there, but I believe the facts will bear out that we are number six. I recommend, therefore, that we make a technical amendment to the resolution which would correct this error.

In 1971, the U.S. catch of fish, crustaceans, mollusks, and other aquatic plants and animals ranked a poor sixth in millions of pounds of live weight. In terms of dollar value, our country ranks an equally poor fifth.

Catch of fish, crustaceans, mollusks, and other aquatic plants and animals—1971:

*A. In Millions of Pounds (live weight):*

1. Peru, 23,394.
2. Japan, 21,815.
3. U.S.S.R., 16,175.
4. Mainland China, 15,168.
5. Norway, 6,779.
6. United States, 6,100.

*B. In Value—Millions of Dollars:*

1. Japan, 2,708.
2. Mainland China, 1,955.
3. U.S.S.R., 1,480.
4. Philippines, 651.
5. United States, 643.

If you examine the above table which indicates the take in millions of pounds from 1971, you will see that Peru has almost four times our catch in terms of weight, Japan more than three times, Russia almost three times, Mainland China, more than twice our catch.

The table on the right is in terms of dollars, and we are fifth in that category.

In addition to our decline in the ranking of world fisheries, there has also been a continuing decline in the domestic production of food fish and shellfish in terms of volume.

U.S. LANDINGS OF FISH AND SHELLFISH

|           | Human food     |                  | Total <sup>1</sup> |                  |
|-----------|----------------|------------------|--------------------|------------------|
|           | Million pounds | Million dollars  | Million pounds     | Million dollars  |
| 1968..... | 2,347          | 468              | 4,160              | 497              |
| 1969..... | 2,321          | 492              | 4,337              | 527              |
| 1970..... | 2,537          | 565              | 4,917              | 613              |
| 1971..... | 2,400          | 595              | 4,969              | 643              |
| 1972..... | 2,310          | <sup>2</sup> 658 | 4,710              | <sup>2</sup> 704 |

<sup>1</sup> Total includes landings for human consumption and for industrial products—processed into meal, oil, fish, solubles, shell products, bait and animal food.

<sup>2</sup> Although these figures represent a record value in dollar columns, there has been a decline in the number of pounds landed.

I have in my statement the table for 1968 through 1972 in pounds and dollars. It is shown for human food on the left, and then the total on the right.

One might say the United States' landing of fish has been almost stagnant in terms of pounds from 1968 to 1972. Although there was a slight increase up to the year 1970, it was followed by a decline in total pounds in both 1971 and 1972.

Now, these figures might seem startling to you and they did to me, Mr. Chairman, when I got into this subject. But, unfortunately, I see immediate amelioration to the problem in sight.

According to the National Oceanic and Atmospheric Administration's report entitled "Need to Establish Priorities and Criteria for Managing Assistance Programs for U.S. Fishing-Vessel Operators": About 60 percent of the vessels in the U.S. commercial fishing fleet are more than 16 years old, and 27 percent have been in service for more than 26 years. With the substantial advances in fishing technology in recent years many of the vessels are considered economically, if not physically, obsolete.

The Marine Resources Panel of the Commission on Marine Science, Engineering and Resources further reported that "the U.S. fishing fleet lagged behind competitive foreign fleets in vessel design, fishing gear, fish detection equipment, propulsion systems, and harvesting methods. This lag is made more serious by the fact that U.S. fishermen are in constant competition with foreign fishermen in fishing grounds where U.S. vessels had operated exclusively in the past and for markets in the United States." The report continues: "Even though the world catch has more than tripled in volume and the number of vessels in the U.S. fleet has increased over 50 percent, the U.S. fleet's fish catch has remained generally stable since 1945. Also, from 1945 to 1970 fish utilization in the U.S. more than doubled. This increasing demand was met by imports which rose over 825 percent since 1945 and which accounted for nearly 60 percent of the total U.S. fish supply in 1970."

Since preparation of the statement, I have a later table, Mr. Chairman, which indicates that domestic landings of edible fish products are down to 34.2 percent of our total consumption. Since domestic landings represented 60 percent of domestic consumption in 1960 we have declined from 60 percent to 34.2 percent in just 12 years.

Gentlemen, the U.S. fishing industry is one of our nation's most valuable resources. In my own State of Louisiana, for example, the fishing industry is not only an integral part of the economy, but it is also closely tied to the culture and history of the State. But in recent years the waters of the Louisiana coast have also achieved the recognition of producing some of the greatest shrimp breeding in the world. In 1969 Louisiana was the first State in the history of the Nation to produce more than 1 billion pounds of fishing products in one year; and in addition, in 1971, Louisiana led all the States in volume of landings with 1,071 million pounds, followed by Virginia, 664 million pounds, California, 640 million pounds, and Alaska 390 million pounds.

I believe strongly in the concept of home rule and I oppose the trend toward a strong centralized government in Washington. And

indeed, our fishing industry has operated with an absolute minimum of Federal assistance in the past. However, the problems confronting the fishing industry today demand that we, in the U.S. Congress, give formal recognition to the fact that this Nation wants and needs a healthy commercial fishing industry. And it is this recognition we will give our fisheries if this resolution is adopted.

It makes no sense to approach problems of the magnitude I have discussed on a piecemeal, catch-as-catch-can basis. I believe we need more than an aspirin, or band-aid approach to help the industry. What we need is a unified approach to meet the problems of the industry. In short, we need a policy of national scope.

I think the importance of this resolution is illustrated by the wide variety of support the resolution has received—from environmentalists, from the AFL/CIO Maritime Department, from State governments—Maine to California—from the National Oceanic and Atmospheric Administration and most importantly from those who derive their livelihood from the fishing industry itself.

I should add, Mr. Chairman, that I received a communication this morning from Mr. Robert D. Nordstrom of the National Cannery Association, an association which represents about 90 percent of the canned food industry in this Nation, strongly endorsing this resolution. With the chairman's permission, I would like to make that a part of the record at this point.

Mr. ANDERSON. If no objection, so ordered.

[The letter referred to follows:]

NATIONAL CANNERS ASSOCIATION,  
Washington, D.C., June 11, 1973.

HON. DAVID C. TREEN,  
House of Representatives,  
Longworth House Office Building,  
Washington, D.C.

DEAR CONGRESSMAN TREEN: After careful review of House Concurrent Resolution 173, the National Cannery Association, and most especially its Fishery Products Committee, endorses the concept embodied in the resolution for revitalization of the United States fishing industry. The National Cannery Association represents over 90 percent of the processors of canned and glass-contained foods produced in the United States including a large variety of fishery products. As a result we have an intense interest in the activities of the U.S. fishing industry.

For many years this industry has been losing ground in a flight to compete with other nations and their products produced in great part by subsidized operations in their countries. In addition, work that has been done by the government for fisheries in the United States has often emanated totally from the government without regard to the views and needs of the fishing industry itself. It is with this in mind that we endorse H. Con. Res. 173 especially the part that calls for consultation with the U.S. fishing industry, its processors, its distributors, and marketing people so as to determine the needs of the industry and how it best can be served by the government.

Cooperation of academia, the industry itself, government officials, on all levels, and the public is needed if the industry is once again to resume its rightful role as a leading industry in the United States. Too often we forget that this industry is one of the oldest of the U.S., and that it has basically served the consumer these many years without large, direct, government subsidization.

We are not, however, in favor of the language added by the Senate. Any language which can be read as unilateral action on extending limits or imposing unilateral restrictive regulations will certainly not help our position in the last preparatory session for the Law of the Sea Conference. This last prepara-



tory session will occur less than a month from now in Geneva and should be allowed to run its course without carrying a burden of actions promulgated by one state. The "species approach", which is the United States position, was evolved by the United States fishing industry in countless long sessions both privately and with government agencies. It should be tried for a while longer.

We would hope the Committee on Merchant Marine and Fisheries of the United States House of Representatives would take quick action on this resolution, and that further, once passed, it should not be allowed to languish but should be used as a focal point for the revitalization of the United States fishing industry, and the wise use of this great natural resource which provides good wholesome food to our nation.

Sincerely,

ROBERT D. NORDSTROM,  
*Director, NCA Fishery Products Division.*

Mr. TREEN. Each of the three Marine Fisheries Commissioners\* has indicated his support for this resolution and I believe that at least one of them was communicated with the committee officially. The three Marine Fisheries Commissioners and their organizations are recognized by Federal law; they represent nearly every State in the Nation with a sea boundary and I believe that their support for this resolution is indicative of its importance to our fish industry.

Now, I wish to emphasize that this resolution does not supplant legislation which I, or other Congressmen, have introduced and will be introducing to address more specific problems; nor does it endorse a hand-out approach to this or any other industry. It does, however, formally establish a national policy in favor of a strong fishing industry. This will raise to the level of official policy that which has always been in line with the national interest; the recognition of our commercial fisheries as an indispensable national resource, which can play a key role in solving international economic problems, and whose just interests must be a factor in our domestic and foreign policies.

In conclusion, let me point to the wide bipartisan congressional support this resolution has received. Senator Eastland's S. Con. Res. had 44 Senate sponsors. On the House side, my resolution had 54 sponsors (16 of whom were members of our own Merchant Marine and Fisheries Committee) from 22 States, Guam, and the Virgin Islands. Thus 98 members of Congress have indicated their support for this resolution with their sponsorship.

I would like to thank the distinguished members of this subcommittee for their interest and will try to answer any questions you may have concerning this resolution.

Mr. Chairman, I have appended to my statement as Appendix A, World Fisheries Catch of Fish, Crustaceans, Mollusks, and other Aquatic Plants and Animals, by leading countries for 1956 through 1971 on a live weigh basis, and also, as Appendix B, Foreign Trade U.S. Imports, Imports of Fishery Products, 1960-72.

Mr. ANDERSON. They will appear in the record immediately following your statement.

[Appendix A and Appendix B follows:]

\* (Mr. Joe Colson, Executive Director, Gulf States Marine Fisheries Commission, Mr. Erwin Alpern, Executive Director, Atlantic States Marine Fisheries Commission and Mr. John P. Harville, Executive Director, Pacific States Marine Fisheries Commission).

## APPENDIX A.—WORLD FISHERIES

*Catch of fish, crustaceans, mollusks, and other aquatic plants and animals, by leading countries, 1956-71*  
[Live weight basis]

| <i>Year and country</i>                  | <i>Million pounds</i> | <i>Year and country</i>                  | <i>Million pounds</i> |
|------------------------------------------|-----------------------|------------------------------------------|-----------------------|
| 1956:                                    |                       | 1964:                                    |                       |
| Japan.....                               | 10, 522               | Peru.....                                | 20, 550               |
| United States.....                       | 6, 574                | Japan.....                               | 14, 001               |
| China (mainland).....                    | 5, 838                | China (mainland).....                    | 10, 505               |
| Union of Soviet Socialist Republics..... | 5, 767                | Union of Soviet Socialist Republics..... | 9, 867                |
| Norway.....                              | 4, 822                | United States.....                       | 5, 773                |
| 1957:                                    |                       | 1965:                                    |                       |
| Japan.....                               | 11, 921               | Peru.....                                | 16, 825               |
| China (mainland).....                    | 6, 878                | Japan.....                               | 15, 229               |
| United States.....                       | 6, 074                | China (mainland).....                    | 11, 757               |
| Union of Soviet Socialist Republics..... | 5, 580                | Union of Soviet Socialist Republics..... | 11, 243               |
| Norway.....                              | 3, 849                | United States.....                       | 6, 006                |
| 1958:                                    |                       | 1966:                                    |                       |
| Japan.....                               | 12, 136               | Peru.....                                | 19, 499               |
| China (mainland).....                    | 8, 951                | Japan.....                               | 15, 657               |
| United States.....                       | 5, 960                | China (mainland).....                    | 12, 414               |
| Union of Soviet Socialist Republics..... | 5, 778                | Union of Soviet Socialist Republics..... | 11, 792               |
| Norway.....                              | 3, 180                | Norway.....                              | 6, 329                |
| 1959:                                    |                       | 1967:                                    |                       |
| Japan.....                               | 12, 972               | Peru.....                                | 22, 484               |
| China (mainland).....                    | 11, 067               | Japan.....                               | 17, 307               |
| United States.....                       | 6, 373                | Union of Soviet Socialist Republics..... | 12, 736               |
| Union of Soviet Socialist Republics..... | 6, 076                | China (mainland).....                    | 11, 435               |
| Peru.....                                | 5, 101                | Norway.....                              | 7, 200                |
| 1960:                                    |                       | 1968:                                    |                       |
| Japan.....                               | 13, 652               | Peru.....                                | 23, 271               |
| China (mainland).....                    | 12, 787               | Japan.....                               | 19, 113               |
| Peru.....                                | 8, 217                | Union of Soviet Socialist Republics..... | 13, 409               |
| Union of Soviet Socialist Republics..... | 6, 726                | China (mainland).....                    | 11, 907               |
| United States.....                       | 6, 205                | Norway.....                              | 6, 296                |
| 1961:                                    |                       | 1969:                                    |                       |
| Japan.....                               | 14, 794               | Peru.....                                | 20, 378               |
| China (mainland) <sup>1</sup> .....      | 12, 787               | Japan.....                               | 18, 989               |
| Peru.....                                | 12, 016               | Union of Soviet Socialist Republics..... | 14, 324               |
| Union of Soviet Socialist Republics..... | 7, 165                | China (mainland).....                    | 12, 202               |
| United States.....                       | 6, 464                | Norway.....                              | 5, 491                |
| 1962:                                    |                       | 1970:                                    |                       |
| Peru.....                                | 15, 793               | Peru.....                                | 27, 807               |
| Japan.....                               | 15, 139               | Japan.....                               | 20, 536               |
| Union of Soviet Socialist Republics..... | 7, 973                | Union of Soviet Socialist Republics..... | 15, 988               |
| China (mainland).....                    | 7, 751                | China (mainland).....                    | 13, 790               |
| United States.....                       | 6, 554                | Norway.....                              | 6, 570                |
| 1963:                                    |                       | 1971:                                    |                       |
| Peru.....                                | 15, 632               | Peru.....                                | 23, 394               |
| Japan.....                               | 14, 768               | Japan.....                               | 21, 815               |
| China (mainland).....                    | 8, 785                | Union of Soviet Socialist Republics..... | 16, 175               |
| Union of Soviet Socialist Republics..... | 8, 768                | China (mainland).....                    | 15, 168               |
| United States.....                       | 6, 122                | Norway.....                              | 6, 779                |

<sup>1</sup> Data are for 1960.

NOTE.—Data reflect latest information published in the various volumes of "Yearbook of Fishery Statistics," Food and Agriculture Organization of the United Nations.

## APPENDIX B.—FOREIGN TRADE, U.S. IMPORTS

## IMPORTS OF FISHERY PRODUCTS, 1960-72

[Amounts in thousands]

| Year      | Edible    |           | Nonedible | Total     |
|-----------|-----------|-----------|-----------|-----------|
|           | Pounds    | Amount    |           |           |
| 1960..... | 1,095,014 | \$310,596 | \$52,685  | \$363,281 |
| 1961..... | 1,087,175 | 339,318   | 61,301    | 400,619   |
| 1962..... | 1,255,532 | 405,832   | 83,975    | 489,807   |
| 1963..... | 1,196,977 | 399,928   | 100,784   | 500,712   |
| 1964..... | 1,318,099 | 433,674   | 130,569   | 564,243   |
| 1965..... | 1,398,778 | 479,412   | 121,492   | 600,904   |
| 1966..... | 2,593,714 | 568,091   | 151,611   | 719,702   |
| 1967..... | 1,470,437 | 538,301   | 169,582   | 707,883   |
| 1968..... | 1,741,365 | 643,165   | 179,504   | 822,669   |
| 1969..... | 1,706,571 | 704,809   | 139,484   | 844,293   |
| 1970..... | 1,873,300 | 812,530   | 224,880   | 1,037,410 |
| 1971..... | 1,785,470 | 887,070   | 187,131   | 1,074,201 |
| 1972..... | 1,341,138 | 1,233,292 | 126,103   | 1,494,395 |

<sup>1</sup> Record.

Source: Department of Commerce, Bureau of the Census.

## IMPORTS: VALUE, DUTIES COLLECTED, AND AD VALOREM EQUIVALENT, 1960-72

[In thousands of dollars]

| Year      | Value           |             | Duties collected |             | Average ad valorem equivalent |                     |
|-----------|-----------------|-------------|------------------|-------------|-------------------------------|---------------------|
|           | Fishery imports | All imports | Fishery imports  | All imports | Fishery imports percent       | All imports percent |
| 1960..... | 363,281         | 14,650,000  | 15,857           | 1,024,000   | 4.4                           | 7.4                 |
| 1961..... | 400,619         | 14,657,000  | 16,904           | 1,057,000   | 4.2                           | 7.2                 |
| 1962..... | 489,807         | 15,241,000  | 17,910           | 1,220,000   | 3.7                           | 7.5                 |
| 1963..... | 500,712         | 17,014,000  | 17,660           | 1,235,000   | 3.5                           | 7.3                 |
| 1964..... | 564,243         | 18,600,300  | 22,035           | 1,583,000   | 3.9                           | 8.5                 |
| 1965..... | 600,904         | 21,231,800  | 22,595           | 1,639,921   | 3.8                           | 7.7                 |
| 1966..... | 719,702         | 25,330,330  | 24,812           | 1,919,514   | 3.4                           | 7.6                 |
| 1967..... | 707,883         | 26,733,200  | 24,709           | 2,016,400   | 3.5                           | 7.5                 |
| 1968..... | 822,669         | 32,991,700  | 25,455           | 2,341,100   | 3.1                           | 7.1                 |
| 1969..... | 844,293         | 35,870,400  | 25,421           | 2,551,200   | 3.0                           | 7.1                 |
| 1970..... | 1,037,410       | 39,767,700  | 25,175           | 2,584,100   | 2.4                           | 6.5                 |
| 1971..... | 1,074,201       | 45,545,900  | 22,455           | 2,768,000   | 2.1                           | 6.1                 |
| 1972..... | 1,494,395       | 55,555,300  | 24,292           | 3,124,000   | 1.6                           | 5.6                 |

<sup>1</sup> These calculated duties do not include the temporary surcharge imposed by the President under Proclamation No. 4074, effective Aug. 16, 1971 and terminating on Dec. 20, 1971.

Source.—Department of Commerce, Bureau of the Census.

Mr. TREEN. About this resolution. I must say I am not an expert in this field. However, as a member of the House Merchant Marine and Fisheries Committee, I have become increasingly aware of the growing problems facing our fish industry, and I think these problems deserve our very careful consideration.

I will now be pleased to answer any questions that you have, Mr. Chairman.

Mr. ANDERSON. Thank you, Mr. Treen.

Are there any questions?

Mr. BREAUX. I would just like to thank my colleague from Louisiana and congratulate him on the leadership role he has taken by sponsoring this bill and also for working to do everything possible to bring the legislation to this point.

Mr. TREEN. Thank you.

Mr. ANDERSON. Mr. Goodling?



Mr. GOODLING. No questions.

Mr. ANDERSON. Mr. Studds?

Mr. STUDDS. Congressman, again, briefly, just as I said to Congressman Cohen, as you know, I joined you in co-sponsoring this.

You say that we should establish national policy in favor of a strong fishing industry.

I would hope there is nobody who can argue with us about that, but my concern, I guess, is obvious.

Since 1946 it has been national policy in this Nation to have full employment, and I am not sure, in fact, I am quite certain if we content ourselves with the mere passage of this legislation, we will accomplish little or nothing. And we will undo what little hope remains in the fishermen to get anything but words out of the Federal Government.

I approach it as your co-sponsor. I think it should be our national policy, but I hope we will all join together in the hope of not merely throwing words at the problem.

Mr. TREEN. Thank you.

I agree, Congressman Studds, that if this is all we were going to do, that we would be wasting the time of Congress. but there has been a head of steam built up around this resolution, and I think that that is the importance of it on the Senate side, among people in the industry, the experts, this resolution has spread to the level of the fishboat operator, and they all have become very interested.

I think not to go forward and pass this resolution now, in view of that head of steam, would make it appear that we are not committed to really doing something to help our fishermen.

One of the reasons I asked that Mr. Simpson be here was because Senator Eastland has developed a good bit of this program. And an important element in the overall program that he envisions, would be to use basically the three Marine Fisheries commissions, the Atlantic, Pacific and Gulf States, as a starting point, to have meetings with the officers and membership of these commissions, where people are involved in this industry, fishermen, gear manufacturers, processors, canners. After these local meetings we would have the information of steering committees and, incidentally, I like Congressman Cohen's idea about having Congressmen go to some of these meetings outside their regions to find out, firsthand, exactly what the problems are, and how we might meet them.

The idea of the other sponsors of this resolution is that these steering committees would meet in Washington or some other suitable place with NOAA officials and hammer out a national program.

I presume in doing this we would evaluate some of the programs we now have in existence which are fragmentary and, of course, in these regional meetings, we would necessarily want to get together with the State agencies and with the colleges and scientific institutions.

But I do think this resolution is a necessary first step to the program of encouraging and receiving input to the problem from all economic sectors. It recognizes the plight of this industry and I think it will help give the impetus. This matter is of crucial importance, which is not your question, but let me digress away from your

question, for a moment. The plight of our fisheries, the large deficits in our international balance of payments, and for us to have to import 65 percent of our seafood needs, is to me unpardonable. Our fish industry should be an economic asset, just as our land agriculture is; mariculture, aquaculture, should be a positive asset in world negotiations, just as our grain and other agricultural produce are.

We have a worldwide protein crisis. I think many experts would agree, and fish is an important source of protein. Then, too, the employment opportunities in this industry are tremendous because they do not require a high degree of skill. There is opportunity in the canning industry and food processing industry. I am not suggesting that expertise is not needed, but this industry can employ large numbers of people without extensive training. All of those reasons, I think, are important and indicate why we need a vital and healthy fishing industry. I agree that if it were just words, it would not have much meaning, but I do think we have an impetus going that we do need to keep going.

Mr. STUDDS. I agree with you and commend you, and Senator Eastland for your leadership in it.

I think because we do have more talk than ever, because of this resolution, and others, and the concern of members of this committee, precisely for these reasons we must act this year, and I commend you and Senator Eastland for the leadership you have shown.

Mr. TREEN. Thank you.

Mr. ANDERSON. Mr. Foyssythe?

Mr. FORSYTHE. Thank you, Mr. Chairman.

I would like to join the other members and Mr. Studds in not only commending you, Congressman Treen, but also Senator Eastland for his leadership.

If we do just use this as words, it is a false service. As you say, the momentum is building and it is a vital matter to our Nation.

Thank you.

Mr. ANDERSON. Mr. Pritchard.

Mr. PRITCHARD. I want to compliment the Congressman as one who also co-sponsored the bill. I share Congressman Studds concerns. I do not know a group that has been more highly structured than the fish industry, at least out of my area. There have been meetings and meetings and meetings.

Mr. Chairman, I view this fishing problem as a problem of priority. We get into conflict with other interests in the Nation and it has been my belief that fishing been too low on the totem pole and pushed to the back burner and other interests come forward and taken priority I would hope that fishing will go to the top of the priority list and that we can get to some fair treatment at times, even preferential treatment, for the fishermen, and do something about restoring the industry to a healthy condition which is important to the fishermen and to the country.

We have to view this in that light, which means in time we will have to put the fishing interests further up the list of priorities than they have had in the last 10 years, and I would hope that this momentum, and I have a feeling it is coming along, I would hope it would be translated into higher priorities, for fishing interests.

I want to compliment you again, Congressman Treen, for taking leadership in this field.

Mr. TREEN. Thank you, Mr. Congressman.

I might comment and Joe Colson can correct me if I am wrong. Although the fishing industry may be pretty well organized on the Pacific Coast, it is in my judgment, one of the most disorganized industries in the Gulf. Mr. Lott may want to dispute that or add to that, but I know in traveling down there I get different ideas and concepts from just about every fisherman I meet, canner and processor, about what needs to be done, and often it is contradictory. Although we in the gulf are not at all organized, I do not know what the situation is like in the Atlantic. But I think that the mechanisms we discussed earlier will help us overcome our regional limitations.

I appreciate your cosponsoring the legislation.

Mr. ANDERSON. Mr. Lott?

### STATEMENT OF HON. TRENT LOTT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSISSIPPI

Mr. LOTT. Thank you, Mr. Chairman.

I, too, would like to commend my colleague and neighbor from the State of Louisiana, Mr. Treen, for his fine leadership in behalf of the House concurrent resolution.

I would like to address some questions also to the other gentlemen with you, and that famous Hurricane Camille. I worked with the gentleman from Congressman Treen's left, Bill Simpson, for several months, in the recovery from that disaster, and one of the problems we worked with, had to do with the seafood industry.

It seems everytime we have a hurricane in the gulf, probably no one segment is hurt more than the seafood industry, and in that connection, I might mention, that Bill Simpson himself was in the seafood industry for some 18 years and had two hurricanes that visited his place of business, so he was very knowledgeable in that area.

One of the things that really struck at the Hurricane Camille, Mr. Chairman, was the way it did affect the fishing industry and when we got to checking into ways to provide some help on an emergency basis for them, we worked with Joe Colson in that effort.

I was amazed how little Federal assistance was available, or was going to be, to the seafood industry, and I was also amazed to find the small amount of assistance from the State going to the seafood industry. The figures were absolutely astounding, they were so small.

I would like to commend Senator Eastland and the efforts of Bill Simpson on his behalf. The job they did in the Senate I understand, passed overwhelmingly there, unanimously, did not have to have hearings because of the overwhelming support that you had for it.

Bill, can you tell us a little bit about what the industry has said on behalf of this policy statement? It is only a policy statement, but I think it is important in connection with what Congressman Studts said and it is only words, but I have been amazed the time I have spend in Washington that there are so few words really wasted on this industry.



In other words, I am glad to see some words directed and a little attention placed in this industry, and I think that has been behind what you were saying.

Bill, would you tell us a little bit about the statement that supports this resolution?

Mr. SIMPSON. Thank you, sir.

Mr. Chairman, members of the committee, it is certainly an honor to be here today. We have 44 sponsors on the Senate side which included both the Republican and Democratic leadership in the Senate, 13 of the 17 standing committee chairmen, and Senators from 21 of the seacoast States.

I know you gentlemen are busy, and I will make this very brief.

Senator Eastland and his cosponsors on our side see this resolution as the keel for the boat that must be built, the base for the road, the foundation for the building; the first step that must be taken for the United States to say to everybody in the fishing industry, we are aware of your problems; we intend to do something about them, and in line with what one of the Congressmen observed today, that the program would not be fashioned here in Washington.

To the contrary, the story that the Federal Government is remote, unreachable, and so forth would be reversed here. The members of the House and the members of the Senate would go out to the people in the fishing industry, to those whose livelihoods are involved, to the States, to the environmentalists, to the colleges and universities, to the sports fishermen, and everyone who has a legitimate interest here and say to them, it is your livelihood that is at stake.

We do not want to frame your program for you. We want to help you. We have come to you. Your fashion your program and pass it on to us through these three fisheries Commissions and we will do all we can to enact a program that will restore health and vigor and growth to your industries.

That, generally, Congressman Lott, is the approach as I understand it.

Mr. LOTT. In that connection, I would like to ask Mr. Colson some questions.

Exactly what you have been doing in your position? Have you been having meetings or do you have any idea how you would go about these meetings in coming up with some concrete suggestions to help?

In that connection, I know one of the problems, without being too harsh on the fishing industry, is that these are tough-minded, individualistic type people, and you get them together and if you have about 50 fishermen there you are going to get at least 50 different viewpoints and half of them will fight for them.

This is going to be a problem and I would like to hear your comments in that regard. We need to get them to work together.

Mr. COLSON. Through the efforts of our other two compacts this is, I might add, the first time we have really been together and we have worked with Jim Eastland, Bill Simpson, with his knowledge and experience of the fisheries, and this is how we sort of got the show on the road.

Our intentions are, without trying to be repetitious, to get to the level of the fishermen, the individual fishermen, and their various opinions.

Mr. LOTT. How do you propose to do that?

Mr. COLSON. Sort of a town hall sort of meeting.

I might add I see where Congressman Cohen brought it out but including Congressman and the staff and let them get first-hand information. But I lost sight of the fact that I know you fellows are real busy and we probably would do this leg work.

Mr. LOTT. Let me interject a question here.

Has this been done very much in the past?

Mr. COLSON. Just recently we have been trying to initiate a State-Federal management plan with the Merchant Marine Fisheries Service and we have had a few meetings as such and like Congressman Treen says, we are more of a splintered group in our fisheries.

We have more diverse interests, specieswise, and we have the same shrimp, but different sizes, quite controversial down in our community.

We have a financing problem and insurance problem on our boats and this. I think, we should get into.

Our fishermen are not in a position where they could ever begin to have hospitalization for the protection of their families. This is an area that we hope to cover and see whether they would be interested at all. We will maybe try to develop small co-ops within the various communities. The reception has been remarkable and, as you said, Congressman Lott, they have diverse opinions and every fisherman you talk to is going to have his personal opinion. I find it is true throughout the country. I have traveled in some of the other areas and it is not only the small fishermen but the larger ones feel the same way also.

This is the message that we have to bring forth. Just a few years ago I was partly instrumental in organizing the trade policy group and felt as though the canners and the National Fisheries Institute would be the two large groups to take a lead in it, but still we are not getting down to the level of this little fisherman, this little independent man, and I think that is the majority.

I have also been in the fisheries business myself and I have a great amount of compassion for this little man when he is out of business. Just as we have had the floods now, we predict that we have a 50-percent loss in our oyster stock down in the Gulf States, and this man is going to have a real hard time of it.

This is the reason that we want to have some input from them and try to work out a program that can be of some help in the future.

Mr. LOTT. Thank you.

Thank you very much, Congressman Treen.

Thank you, Mr. Chairman.

I will submit my prepared statement for the record.

[The full prepared statement of Mr. Lott follows:]

STATEMENT OF HON. TRENT LOTT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSISSIPPI

Mr. Chairman, I want to record my strong support of this concurrent resolution which I hope will implement a nationwide program to save and strengthen our fishing industry.

There is no question that all facets of the fishing industry are in trouble. The world catch has doubled over the last 10 years and ours has declined. We have fallen from first to seventh place and presently import 60-80 percent of all our fish consumption.

Declining production, an outmoded fleet, undefined and often constraining fishing boundaries, pollution, lack of diversification, and inadequate research funding comprise only a portion of the difficulties threatening the industry's existence.

These problems, Mr. Chairman, are not just the fault of the fishing industry itself. The fault lies also to some degree with the oversight of Congress in addition to the problems which the present laws create. I submit that new legislation will give assistance and direction to the ills facing the industry, and my purpose today is to initiate an overall review of the fishing industry by proposing House Concurrent Resolution 170.

The necessary first step should be the establishment of a national fisheries policy. This is important because it is a foundation to legislatively and administratively enact a comprehensive scheme on a practical basis to upgrade and expand the national fishing industry. I suggest, Mr. Chairman, the utilization of the Atlantic States Marine Fisheries Commission, the Gulf States Marine Fisheries Commission, and the Pacific Marine Fisheries Commission. These federally recognized Commissions would act as our Board of Directors. Their sole task will be to aid us in gathering the facts and suggestions we must obtain from all working levels of the industry.

After the Commissions have compiled their information, I suggest that a steering committee be selected from each group to represent the views and desires of those affected by any aspect of fishing operations in every region of the country. These steering committees would then convene at a suitable location with the National Oceanic and Atmospheric Administration officials to draft a national fishing policy for all coastal states. House Concurrent Resolution 170 will establish that policy.

It is my earnest hope that immediate and far-reaching legislation will be instigated by the fishing policy. Examples of such beneficial new legislation are laws allowing for more viable vessel construction programs properly funded so we can compete with foreign industries, personal liability and vessel insurance, increasing fish stock through controlled operations, research in aquaculture, and various other economic incentives.

In closing, Mr. Chairman, I would like to challenge all fishermen to do all that they can to help Congress and the Administration to develop a common course of action and make an effort to communicate their views not only to us but to the entire nation.

I appreciate the opportunity to bring this matter to the attention of the Committee, and I respectfully urge favorable consideration of the request.

Mr. ANDERSON. Thank you, Mr. Treen, for your presentation.

Mr. TREEN. Thank you, Mr. Chairman, and members of the committee.

If I can join you as a member of the subcommittee, I will appreciate it.

Mr. ANDERSON. Do you have anything further, Mr. Lott?

Mr. LOTT. I have submitted my statement for the record and then I would like to summarize a few thoughts.

There is no question and it is obvious that all facets of the fishing industry are in trouble and they need some help. You cannot direct blame just to the fishing industry and you cannot say Congress has been totally inactive because Congress has been concerned with these problems and this particular subcommittee has been concerned with it.

At the same time, we have many problems and the fishermen are helpless in trying to resolve them.

I hope that this particular statement of policy of the Congress will not just be empty words, that they will result in some kind of



concrete legislation, some initiative on the part of Congress, on the part of this subcommittee, to work with the various Commissions to do whatever is necessary to help an industry that is actually in the twilight of its existence.

I am sure the problems can be solved with money, but I think Congressman Treen referred to it a while ago, we need to do a lot more in trying to give some direction to industry that can mean an awful lot to this country.

Mr. Chairman, it is my earnest hope that immediate and far-reaching legislation will be instigated by the fishing policy.

Examples of such beneficial new legislation are laws allowing for more viable vessel construction programs properly funded so we can compete with foreign industries, personal liability, in vessel insurance, increasing fish stock through control operations, research in aquaculture and various other economic incentives.

I appreciate the opportunity to bring this matter to the attention of the committee and I respectfully urge favorable consideration of the requests.

I hope it will be acted on in short order so we can have the policy statement a matter of record and we can proceed with some good legislation.

Thank you.

Mr. STUBBS [presiding]. Any questions for Congressman Lott?

We will now hear from another of our representatives from Louisiana, Mrs. Lindy Boggs.

#### **STATEMENT OF HON. LINDY (MRS. HALE) BOGGS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF LOUISIANA**

Mrs. Boggs. Thank you.

Mr. Chairman, in view of the present state of the U.S. commercial fishing industry and its effects upon the national economy as well, I would like to urge your approval of H. Con. Res. 238, which I am cosponsoring with several of my colleagues to express a national policy with respect to the U.S. fishing industry.

The American fishing industry has slipped from first place to seventh place among the fishing nations of the world. Although the world catch has doubled over the past 10 years, ours has declined. This has occurred in the face of increased American consumption of seafood. The result is that the United States is now importing 60 percent of its seafood requirements. If unchecked, this could very well prove to have a profound effect upon the U.S. balance of payments.

H. Con. Res. 238 represents the realization that it is time for the Congress to elevate to the level of official national policy that which is an integral part of our national well-being—a strong fishing industry.

American fisherman need and deserve organized national support. The existing plight of the commercial fishing industry has developed through no fault of their own. What our fishermen have lacked is the firm national commitment leading fishing nations such as Japan and the Soviet Union have received.

It must be emphasized that H. Con. Res. 238 does not contemplate a national usurpation of the commercial fishing industry. Rather, it is imperative that the National Government work with the State and local governments in dedicating themselves to the task of rebuilding the superiority of the U.S. commercial fishing fleet. Indeed, State governments across the Nation have shown their support to this approach.

It is for these reasons, Mr. Chairman, that I urge favorable consideration of H. Con. Res. 238.

Mr. STUDDS. Thank you Congresswoman Boggs.

Any questions? [No response.]

Mrs. BOGGS. It was a pleasure. Thank you.

**STATEMENT OF JOHN NORTON MOORE, COUNSELOR ON INTERNATIONAL LAW, DEPARTMENT OF STATE; ACCOMPANIED BY DR. ROBERT HODGSON, GEOGRAPHER, DEPARTMENT OF STATE; AND CAPT. CLARENCE HALLBERG, CHIEF, INTERNATIONAL AND MARINE LAW DIVISION, COAST GUARD**

Mr. STUDDS. The next witness is Mr. John Norton Moore, Counselor on International Law, Department of State.

Mr. MOORE. Thank you, Mr. Chairman.

I am testifying this morning for the Department of State.

Testimony has been cleared with the interagency task force on the law of the sea and from the task force this morning, I have with me Mr. Howard Pollock, who will testify after me, the Deputy Director of NOAA, and Mr. John Dugger [Luder] of the Department of Defense is in the audience as well as Mr. Terry Leitzell [Litsell], of the Department of State.

Mr. Chairman, as you know, we are currently involved in the final stages of preparations for the U.N. Law of the Sea Conference which will deal with a comprehensive list of subjects including the major questions involving jurisdiction over the living resources of the world's oceans. The United States, of course, has proposed a species approach to fisheries matters which would give management jurisdiction and a preference to the species based on capacity to harvest to coastal States for coastal and anadromous species and would provide for international arrangements to manage highly migratory species such as tuna. We believe that we will achieve our objectives relating to fisheries in the Law of the Sea Conference and that effective arrangements will be agreed upon to protect our interests.

The bill before us today, H.R. 2283, seems to be an attempt to achieve some degree of protection for our coastal fishermen in the interim period from now until such time as the Law of the Sea Treaty comes into force. We understand the motivation to achieve such protection and appreciate the continuing cooperation we have received from American fishermen in our efforts to reach a lasting, overall solution to fisheries management problems through the international negotiations presently taking place. However, H.R. 2283 seems to reap very small benefits for the American fishermen since it would expand U.S. jurisdiction very little and we feel that such action will not further our objectives in the law of the sea negotia-

tions. The use of straight baselines will expand the area of U.S. fisheries jurisdiction by approximately 2 percent and will thus not begin to provide a solution to the fisheries management problems off our coasts. Also, a simple expansion of exclusive jurisdiction will not solve the global problems or our own problems in a manner which would provide effective, continuing arrangements.

As you know, we have been faced with a trend over the past few years of unilateral expansions of coastal state jurisdiction for many purposes but most often for expanded areas of control over fisheries. Unilateralism has increased the difficulties of achieving a rational system of fisheries management in the negotiations and has generally made the negotiations of all issues more arduous. The United States has continually opposed this trend and has worked hard to convince other nations who are tempted to this course that their long-term interests are better served by active participation in the negotiating process. The step proposed in H.R. 2283 is not a large one but it is a step to expand U.S. jurisdiction over fisheries and there is a risk that it could give a signal, a false signal, to other countries that we are no longer avidly opposed to unilateral action. The risk may not be great but we are entering a most sensitive stage of negotiation and the risk must be carefully weighed against the benefits to be reaped, benefits which we see as minimal. Also, as pointed out above, the U.S. does not feel that expanded exclusive jurisdiction is an effective solution and we do not want to encourage others to follow that course.

Secondly, the creation of a separate area for enforcement of U.S. fisheries laws would complicate the enforcement activities of the Coast Guard since other laws, such as those relating to pollution control, are applicable in a contiguous zone area which is presently identical to the Contiguous Fisheries Zone. Enforcement is a difficult enough chore off our lengthy coasts without adding the complication of different boundaries for different purposes.

Thirdly, Mr. Chairman, enactment of this legislation and enforcement of a new boundary could raise difficulties with U.S. obligations under international agreements. For example, we are presently obligated under a reciprocal agreement with Canada to allow Canadian fishing in our contiguous zone as it existed in 1966. Since the legislation as drafted moves the boundaries of the Contiguous Fisheries Zone seaward, we could be violating our agreement and thus perhaps inviting enforcement of the Canadian closing lines against U.S. fishermen.

Finally, I would like to note a technical problem with the bill. The effect of the legislation would be to move the entire 9-mile Contiguous Fisheries Zone seaward, thus leaving enclaves of water between the zone and the territorial sea in which U.S. exclusive fishing rights would be vague at best.

Mr. Chairman, to summarize, H.R. 2283 offers little benefit to American fishermen and poses some risk to the U.S. law of the sea objectives which are of considerably greater importance to our fishing interests. We feel that the balance of possible risks leads to the conclusion of opposition to such action.

Dr. Robert Hodgson has prepared a chart illustrating these ambiguous enclaves and at the completion of my testimony, if the



committee would be interested in seeing those charts, I would invite and show the committee what the problem may be as well as illustrate the effect of the straight baselines for purposes of a Contiguous Fisheries Zone.

Mr. ANDERSON [presiding]. Thank you, Mr. Moore.

Just a point of clarification on this.

Do we not use the baseline method to a great extent right now in determining our jurisdiction?

I am thinking now of the State of California, San Francisco Bay. Do we not draw the baseline across so that all the water inside that baseline is State jurisdiction, and 3 miles out and 9 miles out is Federal, and do we not do the same thing as for the others such as Monterey Bay?

I was thinking, in my own State, we already do this. Where is it that we do not use the baseline method now.

Mr. MOORE. Mr. Chairman, my understanding is that with respect to the straight baseline envisaged by the bill in article IV of the Territorial Sea Convention we do not use such straight baselines, but I would like to call on Dr. Hodgson of the Department of State to answer that question more fully if I might.

Dr. HODGSON. Thank you, Mr. Moore.

You are correct, Mr. Chairman, in the sense that in the drawing of baselines, as opposed to straight baselines, that bays which meet certain physical criteria being less than 24 miles across in their opening, which have a certain physical characteristic, are closed by lines.

Monterey Bay is closed, as you know. San Francisco Bay is closed. Chesapeake Bay is closed, as is Cape Cod, Massachusetts, Bay; and so on. But drawing of straight baselines is a further extension in that it is permitted, as I am sure you gentlemen know, in the Geneva Convention for coastal areas which are fringed with islands or other penetrations which are not true bay like. Their opening may be greater than 24 miles. They may not quite meet the semicircular test which is required in the convention.

Mr. ANDERSON. Well now, to make this a little more specific, let us take the Southern California coast, for example Catalina Island, which is some 25 miles offshore. What would happen in that case? Would we go out beyond that, draw a line from island to island?

Dr. HODGSON. The difficulty is contained in the language of the convention, which is not very precise.

It says a coastline which is fringed with islands.

Now, the Catalina Islands, in certain areas, are very close to the California coast. They might presumably be enclosed, but from Point Loma to Santa Catalina, I think is about 56 miles, and this is a considerable length of line. It is a length of line which we would ordinarily consider too long.

In the Norwegian Fisheries case, Anglo-Norwegian Fisheries case, which is classic for this, the longest geographic line that was drawn was 40 miles.

Now, in State practice, some States have violated this and drawn lines of considerable greater length, most of these are not considered by experts to conform with the intent of the Anglo-Norwegian Fisheries case or with the convention.

Mr. ANDERSON. Any further questions?

Mr. Studds?

Mr. STUDDS. Thank you, Mr. Chairman.

Mr. Moore, you say there seems to be an attempt to achieve some degree of protection for our coastal fishermen. You are really on guard against that, to provide some interim protection, I am sure. I am not personally familiar in detail with the questions raised in the bill. Do you have any suggestion of any kind as to ways in which this Nation might provide interim protection between now and that mystical date when, in fact, the law of the sea may exist?

Mr. MOORE. Yes, Congressman. We are certainly very concerned with the fisheries problem and the interim problem until the time that the Law of the Sea Convention goes into force.

At the present time we are proceeding, of course, with bilateral negotiations and with the regional fisheries commissions to achieve as great protection as we can in this interim period.

Our feeling with respect to this particular bill is that the kind of additional protection, and I think it is an effort to achieve additional protection, would simply not be worth it in terms of the risk to our larger objectives in those negotiations.

Mr. STUDDS. I can understand that, but I hope you can appreciate the difficulty you would have in saying that to a New England fisherman. You would have gotten two syllables through "bilateral" before sparks would be flying.

Are you aware of the Japanese incursion most recently off Cape Cod, with 3,000 lobster pots out, which the State Department says was an apparent attempt to catch lobsters?

I do not know what else they thought 3,000 lobster pots might be doing out there, but it is a violation of our bilateral agreement with Japan, in which they promise not to fish for lobster.

They also had red crab, which is a creature of the shelf, with strong provision in the law for people who do such things. The question of whether or not we should seize their vessel or impose a \$100,000 fine was nicely avoided by the State Department.

Mr. MOORE. Congressman, you certainly pose the problem well. The enforcement problems are very serious and they are very serious in terms of the challenges to our coastal fisheries in this interim period.

I think possibly Mr. Howard Pollock of NOAA might have a more complete answer to the question you have asked than I do.

Howard, would you comment?

Mr. POLLOCK. Congressman Studds, I think the answer is that these Japanese fishermen were not familiar with the recent negotia-

tions between Japan and the United States which were concluded on the lobster. When they were informed of this, they contacted their government and the Japanese Government confirmed that there was an agreement, that they were not allowed to take lobsters and they picked up their gear and moved on.

Mr. STUDDS. They kept 20 for dinner, I understand.

Mr. POLLOCK. That is possibly so.

Mr. STUDDS. May I ask one other question, Mr. Moore?

Do you have anything to say on behalf of the resolution of Mr. Treen?

Does that also frighten people downtown as a possible interim attempt to protect American fishermen?

Mr. MOORE. I was not asked to testify on the bill today, Congressman, so I have not had a chance to study it.

Mr. STUDDS. And again, as you know, the questions that I and many other members of the committee ask indicate our fear that there will be no fish to protect by such time as 1975 or such time as the treaty may be ratified.

Thank you, Mr. Chairman.

Mr. ANDERSON. Mr. Forsythe?

Mr. FORSYTHE. Thank you, Mr. Chairman.

I certainly join Congressman Studds in his comments on the mystical date for the Law of the Sea Convention, and I think our growing concern as to when this really comes to pass is, will we have a fishing industry to protect at that time? As I view it, if this bill should not be taken as a signal that we are concerned with the things that are going to be incorporated into the specifics of this treaty, then this could be one area of great concern for this committee.

One thing that struck me, are there other nations using the baseline concept similar to this bill, even though it is frowned upon by experts?

Mr. MOORE. Yes, I believe that there are a number of nations now that do draw straight baselines within the meaning of article IV of the Convention on the Territorial Seas.

The United States has not traditionally used such straight baselines. We have sought, as you know, traditionally to maintain a narrow territorial sea.

We have had concerns with respect to minimizing the area of internal water, particularly with respect to protection of the navigable interest in those areas.

Again, I think Dr. Hodgson might be able to give you a more complete rundown of the number of nations that may draw straight baselines at the present time, and I think it would be interesting, if the committee would be interested in seeing this, to get a sense of some of these enclaves that might be in this bill and how the bill would establish such enclaves.

Mr. FORSYTHE. I will certainly ask that that be provided for the record.

Mr. MOORE. Be happy to.

[The information follows:]



LIST OF STATES THAT EITHER HAVE STRAIGHT BASELINES FOR THE MEASUREMENT OF AT LEAST PART OF THE TERRITORIAL SEA AND/OR CONTIGUOUS ZONES OR ENABLING LEGISLATION FOR THEIR CREATION

The following states either have straight baselines for the measurement of at least part of the territorial sea and/or contiguous zones or enabling legislation for their creation. The latter category is distinguished by an asterisk.

|                             |                                        |
|-----------------------------|----------------------------------------|
| Albania                     | Madagascar                             |
| Argentina (historic waters) | Malaysia                               |
| Brazil*                     | Malta*                                 |
| Burma                       | Mauritania                             |
| Cambodia                    | Mauritius                              |
| Cameroon                    | Mexico                                 |
| Canada                      | Norway                                 |
| China, Peoples Republic of  | Jan Mayen                              |
| Cuba                        | Svalbard                               |
| Denmark                     | Oman                                   |
| Faeroes                     | Panama (historic bay)                  |
| Greenland                   | Philippines                            |
| Dominican Republic          | Portugal (historic waters)             |
| Ecuador                     | Angola                                 |
| Egypt                       | Mozambique                             |
| Ethiopia                    | Portuguese Guinea                      |
| Fiji                        | Saudi Arabia                           |
| Finland                     | Senegal                                |
| France                      | Sudan                                  |
| Gabon                       | Sweden                                 |
| Germany (East)              | Syria                                  |
| Germany (West)              | Tanzania (withdrawn ; to be re-issued) |
| Guatemala (historic waters) | Thailand                               |
| Guinea                      | Turkey                                 |
| Haiti                       | United Kingdom                         |
| Iceland                     | USSR*                                  |
| Indonesia                   | Venezuela                              |
| Iran                        | Vietnam (South) *                      |
| Ireland                     | Yemen (Aden)                           |
| Kenya                       | Yugoslavia                             |
| Liberia*                    |                                        |

In addition, two states have claims to extensive "rectangular" sea areas which do not relate to the normal low-water baseline: Maldives and Tonga.

Mr. FORSYTHE. I would additionally ask that if you could provide for the committee charts showing existing lines, that is our existing lines, and show the situation if this bill were to apply.

Mr. ANDERSON. We will make this a matter of record.

Mr. MOORE. Surely, be pleased to do that.

[The book entitled *International Boundary Study, Series A, Limits in the Seas* was placed in committee files.]

Mr. FORSYTHE. I suppose this is an area that does go outside our policy. It seems we are the ones using the different concept. There are others that claim larger territorial waters. What does the Department of Defense feel about the concept in this bill? Do you have any input on that?

Mr. MOORE. The Department of Defense has cleared the testimony through the Interagency Task Force, and I think it would be a unified governmental position in opposition to the bill.

I would like to come back to one point, and that is the date on the Law of the Sea Conference. I understand your concern on this. It is important in view of the threats faced by our own coastal fisheries at this point, that there be a solution to these problems, a prompt and timely solution.

We have testified in other context before this committee that the U.N. General Assembly has now set a time table for the conference, which would be an organizational session starting later this year, November or December of this year, followed by a substantive session to be held in 8 weeks, in April and May of 1974, and contemplating a final, a possible final session of the conference no later than early 1975, so that we are, in fact, entering the final stage of negotiations for the Law of the Sea Conference.

On July 2 we will be leaving for Geneva for the last of the preparatory sessions of the U.N. Sea Beds Committee that has been scheduled at this point, and I think it is particularly important even though this is a de minimis kind of extension of our fisheries contiguous zone, or would be even though a number of other nations do engage in this kind of activity, we think it would be the kind of thing that could at this point send the kind of signal that would complicate these negotiations for us and make it more difficult for us to achieve the objectives that we are trying to achieve in these negotiations.

I would also like to point out that the basic thrust of the Law of the Sea negotiations with respect to fishery matters is to confirm broad coastal state resource management jurisdiction beyond the territorial sea, a kind of confirmation that would be far more effective than simply the 1 or 2 percent extension that may be contemplated by this bill.

The United States has proposed a species approach, which would place all coastal stocks plus anadromous stocks off U.S. coast under the management jurisdiction of the United States.

In addition to that, the United States would have preferential rights to those stocks in these areas, so that the basic thrust of the negotiation that we are engaged in is for broad resource jurisdiction over our coastal and anadromous stocks.

In addition to that we do have these negotiations. It is important to try to preserve our distant water fisheries interest as well as to achieve effective international standards on conservation, and to the extent that we act unilaterally, even though it is a very small extension, even though at the present time it is within article IV of the Territorial Sea Convention, I think there is a risk that it would endanger our other fisheries interest.

Mr. FORSYTHE. I would first comment, and then one last question.

While I fully support the U.S. position for the Law of the Sea, it is one that should be reached, it seems so far down the road that we have to have something to keep us going until we get to that, and now we have been pressing for dates.

Would you care to predict an implementation date, a conference schedule?

Mr. MOORE. Well, we have testified in another context before this full committee that as far as we are concerned the conference should reach a conclusion either in 1974 or, at the latest, in early 1975; and certainly our planning with respect to our own interest is based on the conference being concluded at the latest by early 1975, so that, for example, the Convention could be presented to the General Assembly in 1975.

Mr. FORSYTHE. We may ask you every time we see you, because we are concerned.

Mr. STUDDS. Would the gentleman yield?

Mr. FORSYTHE. Yes.

Mr. STUDDS. Is there not an interim period after the convention is successful, a period in which the necessary number of States must ratify the Convention before it comes into effect?

Mr. MOORE. That is correct.

Mr. STUDDS. Based on your experience, how long is that procedure apt to take?

Mr. MOORE. That depends to some extent on the number of signatures that may be required. It sometimes takes an extended period of time.

We have testified in another context with respect to the question of Sea Bed resources, that we would support a provisional application of the regime for that interim period between the time at which the Convention was signed and at which it went into force.

Mr. STUDDS. That is for the Sea Bed?

Mr. MOORE. That is correct.

Mr. STUDDS. And that is for this Kennecott Company. What about the fishermen?

Mr. MOORE. We are studying the question of provisional application of the convention beyond simply Sea Bed resources at the present time.

We have reached no final determination on that, Mr. Studds. The study resolution which the secretariat has prepared on this issue is not confined solely to the question of provisional application of the international sea bed machinery for the exploitation of mineral resources.

Mr. STUDDS. You will recall on two or three occasions I have asked, I believe, you and other witnesses from the administration whether we are prepared to state, as you did, and state clearly that we want such an interim procedure with regard to the fishermen.

Are we yet prepared to state that we are as concerned about the fishermen as the Hughes Tool Co.?

Mr. MOORE. We certainly have a concern. I can unequivocally say yes to that.

Mr. STUDDS. But are we going to do something about it? Are we going to make a similar proposal for an interim coming into effect for the fishermen?

Mr. MOORE. We are studying the possibility of that at the present time.

Mr. STUDDS. I thank the gentleman for yielding.

Mr. ANDERSON. Mr. Treen?

Mr. TREEN. I am not a member of the subcommittee, but I would like to ask a question.

Along that same line, I realize you are not here to testify on the resolution that I testified about, but on the Senate side the resolution was introduced and had the same language, and the Senate added some clauses to the resolution which passed the Senate unanimously, and after stating the policy of the Congress, the fishing industry is to be given all support necessary to have it strengthened, et cetera, and, further, that Congress is fully prepared to act immediately to



provide interim measures to conserve overfished stocks and protect our domestic fishing industry.

That language is not in my resolution but it is in the Senate bill, which we have up also for consideration today.

Can you give me your comments as to what effect that might have on the negotiations? Is it adverse to have such language as that? Is it adverse to deal from a position of strength, so to speak? Let me have your candid comment. You think we should have that in our final resolution, that sort of language?

Mr. MOORE. I think, Congressman, it really depends on the kind of interim measures that are contemplated, and what interim may mean.

I would be somewhat troubled by the breadth of the language as it now stands. I do think we run a risk in these negotiations of making more difficult the achievement of our objective with respect to the protection of our distant water fisheries' interest, and the kind of conservation regime that we would like to achieve in these negotiations by too vigorously pressing an interim proposal during the negotiating phase of this conference.

Again, I find it very difficult to respond off the cuff on this one without having a chance of knowing what, in fact, are the kind of interim measures that may be contemplated and what the Senators had in mind on this.

Mr. TREEN. I do not know that the Senators had anything particularly in mind except they were exercised about the matter and decided to put that language in.

Let me ask you one other question. Under the Geneva Convention, is the same criteria used for determining the baseline of the territorial sea for fishing as for other purposes, such as mineral exploration?

Mr. MOORE. That is correct. There is no distinction in article IV made between the baseline for the territorial sea and fisheries' purposes.

It is one set of criteria that is used that is set out in that article that in fact, prior to, comes from the North Seas Fisheries Case basically.

This bill would separate in essence and you would have one kind of criteria for territorial sea, another kind of criteria for the contiguous fisheries zones.

Mr. TREEN. I will make this comment and then conclude. I hope that in these negotiations, and particularly with regard to the base that one of the witnesses mentioned about determining which is a bay or how you measure a baseline, we will push for the greatest possible seaward extent. We have an awful lot of oil production offshore Louisiana and I think elsewhere, and this offshore oil is extremely critical to our national interests.

I am going to be watching the negotiations very carefully and I am hoping and urging you in every way I can think of to move that line out as far as we can for all purposes.

Mr. STUDDS. Would the gentleman yield very briefly?

Mr. TREEN. Yes.

Mr. STUDDS. I had not noticed that you had removed that language in the Senate resolution from your own.

Mr. TREEN. Let me explain it. The resolution introduced on the Senate side was identical. This language was added in the Senate.

Mr. STUDDS. The State Department, of course, with respect to your resolution, our House resolution, says it believes that section 1 suggests the possible implementation of unilateral action and, therefore, it recommends that section 1 be modified by adding the words "consistent with international law."

In Section 1, line 7, of the Senate resolution, Congress is "fully prepared to act immediately to provide interim measures to conserve overfished stocks and to protect our domestic fishing industry." The State Department recommends the word "immediately" be deleted and that we insert in lieu thereof the phrase "consistent with international law".

They are the initial comments of the Department of State.

Mr. TREEN. I have not seen it.

Mr. STUDDS. I would like to say to the gentleman from Louisiana that I would hope you would move to insert the Senate language, and if you do not do so, I will.

Thank you for yielding.

Mr. TREEN. Thank you, Mr. Chairman.

Mr. ANDERSON. Mr. Pritchard?

Mr. PRITCHARD. Mr. Chairman, I think the last time we talked about the Law of the Sea, many of us, I guess, were getting edgy and some a little bit discouraged.

My recent reading of the situation shows there is a falling away of support by the South American countries for the Law of the Sea proposal. The possibility of our proposition carrying seems to be getting a little thinner. We have lost a little bit of strength.

It is becoming painfully clear that we are not going to be able to make the progress we had hoped for.

I would hope that you would have some fallback position, an alternative plan.

I would hope that you have some alternatives and that we would not have remain passive when it becomes apparent that the proposal is going to fail.

If we have to lose a year or two & put the fishing industry over the rack unnecessarily, that industry will suffer irreparable harm.

Personally, I feel that a viable law of the sea conference is possible. I think it is a good proposal, but I think chances for success are becoming more and more remote. I would just hope that you have a fallback position and we do not have to lose another 2 years when it is obvious that we are not going to reach our goal. I would urge you strongly to have a backup position.

Mr. MOORE. It has been a long time that we have been engaged in these preparatory negotiations.

My assessment from the March-April meeting is that there is a greater commitment at the present time to a timely and successful Law of the Sea Conference on behalf of all the nations of the world, including the Latins, than we have seen before. I am more optimistic at the present time on the basis of the last assessment of the Sea Bed Committee than I think would have been merited earlier.

We do have a schedule set by the General Assembly. All of our readings are that the nations of the world are committed to that schedule.

Let me say that we have made it clear to them in these discussions that we will continue to monitor very closely the maintenance of that schedule and will reassess our own interest accordingly, if it looks as though there may be substantial slippage in that schedule.

It is certainly something that we will continue to reassess. If at any point it looks as though we will not achieve a timely or successful Law of the Sea Conference on the schedule that we have set up, we will reassess it.

Mr. PRITCHARD. My understanding is that while there may be more determination by the countries to participate, that there is less enthusiasm for our particular plan. That is just misleading.

I suppose it is not going to do any good for you to comment on that.

Mr. MOORE. It is very difficult to say at this stage about the negotiations, frankly. I think there has been increased support and understanding for the species approach, and I am reasonably confident that the basic thrust of these negotiations is to lead to broad coastal state resource management jurisdiction over coastal stock and anadromous species. I think that the danger to the U.S. interest and the options that we must continually reassess and look at through the course of this conference has to be set against the background of the basic thrust of these negotiations.

Mr. PRITCHARD. Well, I wish you well.

I also believe that the American public has no idea of the importance of the Law of the Sea or the long-term danger down the road if we do not come to some resolution. Failure will put us in a catastrophic state.

Mr. MOORE. I certainly share that assessment.

Mr. PRITCHARD. Thank you.

Mr. ANDERSON. Mr. Lott?

Mr. LOTT. Thank you, Mr. Chairman.

First of all, I would like to thank you for your statement with regard to H.R. 2283, that you were not prepared to make comment on the House Concurrent Resolution, and I am concerned with the content of a letter that was just placed before us from Marshall Wright, Assistant Secretary for Congressional Relations.

That letter testifies to what we are talking about. It is an effort to do something now, and I do not want to drag this thing out unduly, but it is something we are concerned about right now.

As Mr. Pritchard was saying, we all hope very strongly that the international negotiations are successful, but I hope along with Congressman Studds and others that we have some saltwater resources to protect when the international negotiations are concluded. Things are happening now. Our stocks are being severely depleted. It looks to me like we are looking at a year and a half at a minimum, maybe 2 years, and then when we get there what are we going to have?

Have you any comments along these lines? I mean the resources are being depleted right now. We want to make some effort to protect these.

Mr. MOORE. Yes, again a very brief comment, in the context of the law of the sea negotiations, and then, with your indulgence, I would like to ask Howard Pollock to provide some additional comment.



As far as the Law of the Sea negotiations are concerned, again the basic thrust is once we are able to achieve agreement on this and we think we are moving toward that on a fairly firm schedule at the present time to protect those coastal resource fishery stocks, during the interim period we do engage in continuing bilateral discussions and participate in the international regional fisheries organization. That has not been entirely satisfactory in the past to us. We are making strenuous efforts to improve the situation in those organizations, and with respect to any possible interim measures, for example, that would establish a substantial fisheries zone beyond the territorial sea, I can say that it would have very major adverse consequences on the Law of the Sea negotiations at the present time.

It would prejudice a wide variety of interests that we have in these negotiations, including our defense interest with respect to free transit through and over international straits, including our distant water fisheries interest, including the possibility of getting appropriate international standards on conservation regimes and possibly including the question of coastal State management of anadromous species.

I do think that we all share very strongly the concern to protect our coastal fishery stock as much as we can, that we have to be very cautious, particularly in this interim period as we are engaged in these negotiations.

Howard, would you like to add to that?

Mr. POLLOCK. I would like to say that I think you can recognize if you were playing a football game you could not publish the signals you were going to give in the papers so the other team would have them before you start to play the game.

This is part of the concern that we have now. I think we all share the very real concern for this interim period, indeed for the long range.

We are trying to meet the critical problems in the interim through bilateral or multilateral agreements, aside from the Law of the Sea conference.

A meeting of ICNAF, the International Commission for the North Atlantic Fisheries, right now in Copenhagen, is a forum in which we are trying to work out some fishing problems with 15 other nations, telling them what has been going on that is not acceptable; that, of necessity, there must be certain changes; that we are prepared to take some drastic action.

We are just not sitting on our hands hoping that this will be successful.

Mr. LOTT. That is good. I hope our signals are not all defensive signals. That is what worries me.

Thank you, Mr. Chairman.

Mr. ANDERSON. Mr. Moore, just a point of clarification. Your objection to H.R. 2283 is that it endangers our own sea objective? Is this because we are not asking enough in the bill, the proposal? Is that the reason you think it might indicate we would be willing to settle for less?

My question is, should we be asking for more? I was wondering if this same philosophy applies to other nations. Iceland has just claimed 50 miles and, of course, Brazil is strictly enforcing 200

miles, and Canada is extending theirs, and in my area, the Mexican Government, they have not extended it but they have adopted a very strict enforcement. Our fishermen are told that at least 50 percent of those employed on the vessel be Mexican nationals.

Do you think this endangers their objectives by asking for something stronger?

Which approach is the most successful?

MR. MOORE. Certainly, the kind of unilateral action that is illustrated by the examples you have given very seriously endangers our interests.

MR. ANDERSON. But what about theirs? Do you think that Iceland endangered their objective by asking for 50 miles, and that Brazil was endangering theirs by enforcing the 200 miles? Do you ever consider that maybe we are not being strong enough, that we are being too easy?

MR. MOORE. I think in the long run they may be endangering their own interest in a variety of areas, including navigation and other problems.

We are committed to settling the problems of ocean space by a multilateral negotiation. We feel that it is the only way that we will get a satisfactory resolution of the issues. It is not going to lead to continuing conflict.

I am quite certain as far as our own distant water fisheries interest, for example, our own navigational interests, our own interest in protection of scientific reserve, that unilateral actions of the kind in the examples that you have given, that other countries have entered into, very strongly endanger our interest.

This is one of the reasons why we are particularly sensitive to this kind of unilateral action. We need to set a very strong example for the Law of the Sea Conference, that the only way to satisfactorily resolve these issues is in the multilateral conference.

We are committed to that conference and I think frankly that we have a good chance of a satisfactory outcome in that negotiation.

MR. ANDERSON. Do you not feel that our negotiators would have an even stronger hand if they knew that back home there was even greater agitation than that we were willing to settle for; then they would be able to show the people with whom they are negotiating that we are being quite reasonable—look at what they are asking for back in the States.

I would think that what these other countries are doing would strengthen their hands in the negotiation.

MR. MOORE. It is partly a question of what issue you are negotiating at that time.

The basic thrust of the negotiations is for broader coastal state resource management jurisdiction, so that most of the other coastal states of the world, at least with respect to fisheries, are basically in our camp on that issue.

On that we really do not need to strengthen the hand, and on that there is very broad support in these negotiations.

The issue that is difficult in these negotiations is the full protection for the distant water fisheries interest, the protection of our navigational interests, the protection of freedom of scientific research and other interests, and those would not be helped in any

way by an approach basically that is urging precisely what some other coastal states are doing. For those we need a degree of international cooperation.

We also need a degree of international conservation standards. We need an international management regime for the protection of highly migratory species.

There is a delicate balance between the preservation really under a species approach of the different kinds of interest that are at stake.

We do hope that other nations will know in these negotiations, and get very clear signals, frankly, of the kind we hope we have been sending; and I know this committee has been sending, that the United States is very genuinely concerned with the welfare of its fishermen and its coastal fisheries resource stocks.

I am quite sure that others do know that in these negotiations.

Mr. ANDERSON. Mr. Everett?

Mr. EVERETT. Thank you, Mr. Chairman.

Mr. Chairman, I would like for the record to show first the Department of State was asked to comment on the House Concurrent Resolutions introduced by Mr. Treen, Mr. Lott, and others. In fact, the Department of State filed a report with the committee.

I would like the record to show also that the Department was requested to comment on the legislation if they had sufficient interest.

Mr. MOORE. My apologies, Mr. Chairman. That is my error.

I had no understanding that we were to testify on anything but this bill. We would be happy to put a statement in writing and get it to you on this, if you would like that.

Mr. EVERETT. Mr. Chairman, I find myself encouraged by the State Department's comments, particularly in view of their past history.

I believe you indicated that you are hopeful we can have an agreement on the Law of the Sea Conference in 1975. However, it could be 5, 10, or even 15 years down the road before it is actually implemented. For instance, the territorial sea and contiguous zone convention was agreed to in 1958. It went into force and effect in the United States in 1964, and as yet the United States has not sent to the Congress implementing legislation to carry out that convention. Is the same type of action we can expect from the Law of the Sea Conference after it is agreed to and ratified by the Senate.

Mr. MOORE. Yes; there is frequently a lengthy period of time between the time the Convention is signed and you receive enough ratifications for it to go into force. That is a serious interim problem for protection of our fishery stocks, and it is one that we are looking at very closely at this time.

Mr. EVERETT. You also failed to point out that at the Law of the Sea Conference, the United States is proposing a 12-mile territorial sea, which is based on the same principle that this legislation is based on.

The legislation we are considering in essence spells out more or less what you advocate in the Law of the Sea Conference.



MR. MOORE. The position on the Territorial Sea and the Law of the Sea Conference is part of a multilateral final overall settlement for all of the Law of the Sea issues that will appear in the convention.

For example, our shift from 3 to 12 miles, or our announcement of our willingness to make that shift certainly depends on achieving free transit through and over international straits as part of that overall package, so that our opposition to the present bill goes really to the timing, goes to the question of the separation of straight baselines for one purpose and another.

Our support for 12-mile territorial sea under certain circumstances does not deal with the question of drawing straight baselines as to the starting point for the territorial sea.

MR. EVERETT. Yet, the United States has already agreed to the concept of the straight baseline method for establishing the territorial sea.

MR. MOORE. That is correct. We are signatories to the Geneva Convention on the Territorial Sea and the Contiguous Zone, and article IV does permit certain straight baselines under circumstances that Dr. Hodgson has set out.

MR. EVERETT. What was the purpose of signing the Convention if we are not going to implement it?

What are the advantages of just signing a convention if you don't implement it.

MR. MOORE. We have, of course, implemented and do accept as permissible international law the provisions of the Convention on the Territorial Sea, and the contiguous zone.

We have traditionally not shifted to a use of straight baselines because of a number of different concerns.

One of those concerns is the question of increasing the area of internal water which would not be subject, for example, to innocent passage. They have far greater navigational restrictions than do non-internal waters; the difference between internal and territorial is rather significant in terms of the navigational interests.

There have, of course, been other reasons. One particular reason at the present time is that whatever the reason in the past for not using straight baselines to shift at this particular time prior to the Law of the Sea Conference would possibly be interpreted by some as a signal, for example, of the permissibility of the use of straight baselines in midocean archipelagoes or in some other way which we have felt has not been consistent with article IV.

MR. EVERETT. But you indicated a while ago Canada has already gone to the straight baseline method, and a number of other countries signatory to the Convention have done likewise.

Can you tell us at this time how many nations are signatory to the territorial sea convention, and how many of those nations have gone so far as to implement the straight baseline method?

MR. MOORE. I can supply that for the record. I think it is over 40 at this point, but I can supply it if you wish.

MR. EVERETT. Yet it has been 9 years since this convention came into effect in the United States. Other nations have established a straight baseline method for measuring the territorial sea, yet the

United States still has not seen fit to do this because of some complication with the international straits concept.

You also indicated to implement the straight baseline concept would constitute unilateral action. I fail to see where there would be any unilateral action on the part of the U.S. since we have already agreed to this concept. What this bill is designed to do as I see it is to get the State Department off dead center and go forward and utilize the straight baseline method for the purpose of establishing the 9-mile contiguous zone.

You say this is causing a problem.

Is this because the legislation only calls for establishing the contiguous fisheries zone based on the straight baseline method and would not, at the same time, call for the plotting of the territorial sea? Is this the problem that you are referring to?

Mr. MOORE. There are a number of different problems.

First is the question of unilateralism, and I agree with you the kind of straight baseline suggested by this bill, since it specifically says they must be consistent with article IV, would be permitted under our assessment of international law.

In that sense one can say it is hardly a unilateral action.

The difficulty is the perception of unilateral action. For the United States to make a shift to straight baseline at a sensitive time in the negotiating framework of the Law of the Sea Conference, when we have not supported straight baselines prior to this, could be interpreted at this particularly very sensitive psychological moment as a unilateral action signaling the kind of freedom to draw very substantial straight baselines to reopen the entire issue, for example, that we would be concerned with.

With respect to the other difficulties we have with the bill, a second problem really is the enforcement problem and the use of different kinds of zones basically, one kind of contiguous zone for enforcement of certain kinds of laws in a separate contiguous zone for enforcement of fisheries law.

We also have a problem with this rather ambiguous enclave that may be created by this bill. There would be a territorial sea under this bill. There would then be some kind of ambiguous area that might conceivably be high seas, for example, in which the fishermen of foreign nations, once they got in there, might have even greater freedom to fish. Then there would be the contiguous zone beyond that.

So whatever is achieved in the extension of the contiguous zone under this bill is achieved at the cost of a corresponding ambiguous area between the territorial sea and the contiguous zone which might be interpreted as high seas.

Mr. EVERETT. Just one brief question. Would you not have the same problem if you plotted the 12-mile territorial sea?

Mr. MOORE. No, you do not because it depends on your base point.

Mr. EVERETT. This bill calls for the same method you use in plotting the territorial sea.

Mr. MOORE. But only for the contiguous zone and not the territorial sea. That is the problem.

This bill does not in any way say whether or not the breadth of the territorial sea would change under U.S. law. It remains the same.

Mr. EVERETT. I understand that.

Mr. MOORE. The only thing it changes is where the inner and outer boundaries of the contiguous zone are, and it would mean actually in some areas that the inner boundary of the contiguous zone would start beyond the territorial sea.

That means there would be an area of ambiguity there, which would not exist under a 12-mile territorial sea proposal.

Mr. EVERETT. Just two other brief questions.

If you will please indicate at a later time the cost of this legislation for the current fiscal year and the next five succeeding fiscal years should the committee decide to report it. Also should the committee desire to report it, can you suggest some amendments to satisfy the problems over which you express concern. We would appreciate having your comments.

Now the last question. I think you indicated there would be about a 2-percent increase in the fishery zone if this legislation were passed.

Would not the Alaskan and New England area percentage be greater than the average? Do you have percentages on the New England and Alaskan areas?

Mr. MOORE. No; I do not, but Dr. Hodgson may have a rough guess at that.

Dr. HODGSON. No one would really know the effect of these lines until they are all drawn and the measurements are made.

The effect would be greatest in areas where there are deep indentations which are not considered under the current definition as bays—Cook Inlet, several of the large basins on the Alaskan west coast, for example, could be enclosed by straight baselines, but are not deemed to be bays.

The area of Maine, for example. I would assume that the percentage, I would guess the percentage would be less than 5 percent.

The major effect of straight baselines is to increase the amount of internal water by decreasing it from the territorial sea.

The effect of straight baselines is not to increase the territorial sea by much of a degree at the expense of high seas.

Mr. EVERETT. Thank you.

Mr. ANDERSON. Mr. Rountree?

Mr. ROUNTREE. Mr. Moore, I noticed in your testimony you indicated previously that the views you were presenting were a composite of the Law of the Seas Task Force.

I think it would be highly appropriate for the committee to have submitted in writing the individual views of the members of that task force, composed of Justice, Commerce, Coast Guard, and other agencies of the Federal Government.

Could you supply that for the record?

Mr. MOORE. I think I can state right now that there was no disagreement at all on the interagency task force, on this testimony.

I would be happy to supply a letter for the committee confirming that, if you wish.



[The letter was not received by the subcommittee.]

Mr. ROUNTREE. I notice that article V of the Convention guarantees the right of innocent passage if we go to a straight baseline method.

Does this not change the Department of Defense position in relation to freedom of navigation/right of innocent passage?

Mr. MOORE. Well, if we were to make a shift to straight baselines, either for the purpose of contiguous fishery zones or for all purposes, it would have an impact on navigational freedom largely because the principal difference really is the amount of water that is included as internal water, in which you do not have the right of innocent passage under international law.

Mr. ROUNTREE. It is my understanding that in the staffing of the interagency task force position you met a couple of days ago, and correct me if I am wrong, but I think the Department of Justice expressed some concern in relation to eventual enactment of the bill as impacting on various pending suits between the Federal Government and the States in relation to the extent of land and water areas controlled by the States and the Federal Government.

Is that correct or not?

Mr. MOORE. Well, I am not sure that I could speculate on any particular statement of Justice.

We can try to put that in a letter for you, if there has been any difference of opinion on that.

I do think one traditional concern in the question of drawing straight baselines is the ambiguity as to the impact of drawing a straight baseline on resource questions in State-Federal relations.

Mr. ROUNTREE. That is precisely why I asked you the question, to get the individual views of the agencies in a little bit more detail, because presumably the straight baseline method would impact, at least in Defense's view, significantly.

Justice has some concerns, Commerce particularly, and of course the Coast Guard.

I think a little bit more of an enunciation of those individual positions would be helpful for the committee to evaluate in terms of the legislation.

One last question. Could you provide for the record a historical scenario of the basic rationale as to why the straight baseline method was not implemented at the time the Convention was agreed to by the United States, and then I guess through the passage of time indicate presumably that this position has not changed and the rationale therefor, because we are talking about an awful long period of time, from 1958 to 1964 up to the present time. This would be helpful, to see a historical prospective of the U.S. position in relation to this Convention, and tying it with the Law of the Sea, which you have so ably done today.

Mr. ANDERSON. Mr. Kyros?

Mr. KYROS. Just one question.

You spoke, I think, of Maine. It occurs to me that Canada is using a straight baseline, are they not?

Mr. MOORE. That is correct. They use a straight baseline method combined with fishery closing lines.

Mr. KYROS. How does that affect the United States? Does it affect our zones at all?

Mr. MOORE. We have a convention with Canada entitled "Reciprocal Fishing Privileges between the United States of America and Canada" which was initially signed in 1970.

One of the difficulties that we have with this legislation is that since the starting point under that reciprocal convention is the contiguous zone in 1966, this bill might be interpreted as in violation of and as contradicting that Canadian agreement.

If that were the case, it is quite possible that the Canadians might not wish to allow U.S. fishermen, for example, to have the benefits under this reciprocal fishing privilege agreement.

Mr. KYROS. First, the Canadians made a change to the baseline method undoubtedly to better their fisheries jurisdiction, is that right?

Mr. MOORE. I am not sure of all of the reasons for their shift, but yes, they have made the shift.

Mr. KYROS. So now you say we come along, subsequently as usual, and we want to make a change, but we are worried that it might affect this convention we have with the Canadians.

I do not see that as valid at all. I think we ought to look out for our self-interest. We should not do anything to infringe on the Canadians, but your argument is that we should not draw these straight baselines because you think it would not help the fishery industry, is that right?

Mr. MOORE. Yes.

Mr. KYROS. Apart from that, the action would be deemed to be unilateral, although it is lawful action according to the world court.

Mr. MOORE. Yes.

Mr. KYROS. Why cannot we do it? I am told flatly that in Maine, around the islands off our coast, it would be of great benefit to us. I would not want to take a shortsighted parochial policy, on another country—yes, I would—but we ought to do everything we can to stake out our own waters.

I do not know what your arguments are against the use of straight baselines. I heard the other gentleman say we do not know the precise effect of these baselines because we have not drawn them yet.

Mr. MOORE. First, let me go back to the Canadian point.

Under the reciprocal agreement, the Canadians permit us, and Mr. Pollock can provide some additional detail on this, but the Canadians permit us to fish off their coast as the situation was in 1966.

In other words, those straight baselines and fishery closing lines have not been applied to us because of the existence of this agreement.

Were we to make a change in the computation of our system there is a danger that the ambiguity is that would be applied to the Canadian action, in fact, as the bill is written now it would be applied to that situation because it is later in time and would take precedence over the prior convention, and as a result, I think the Canadians would feel that we had violated our obligation under the convention, and therefore, as one possibility they might say that they will draw a straight baseline and closing lines in respect to U.S. fishermen.

From the present standpoint the United States fishermen under this reciprocal fishing privileges agreement do not have these straight baselines and fish closing lines apply to them.

We do have something to lose by that.

Mr. KYROS. Would not it be possible to draft this legislation with a provision that would exempt the Canadians from the effects of the straight baseline method and enforce it against other nations.

Mr. MOORE. That is correct. I think this legislation with respect to that objection to it could be cured by an additional provision, or by clearer legislative history.

With respect to the other problems, though, I think there are difficulties in trying to cure it by this legislation.

The first of those really is the question of the perception of other nations that the kind of action that we are taking in making shift in drawing the straight baselines is a shift to unilateral action.

It is a perception problem. It is not a question of exactly what we are permitted to achieve under this convention.

I think the question really is, is this the kind of thing that we are going to get a very incremental increase in protection for our coastal fishermen at what can be a significant cost to our other interests at stake in these negotiations.

My best judgment on that is the kind of increased protection you would get by this is in fact, very incremental compared to the risks you would be taking by it.

Mr. KYROS. Well, I think this colloquy is enlightening, and I think your remarks are most sensible and helpful to the committee.

I hope Congress will enunciate the policy they want by enacting the baseline and taking every other step to indicate to foreign nations that we intend to act in every way to safeguard our fishermen.

Mr. ANDERSON. Can you get us a copy of the Canadian agreement?

Mr. MOORE. Yes, and the historical study that was called for also. [The information referred to follows:]

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF CANADA ON RECIPROCAL FISHING PRIVILEGES IN CERTAIN AREAS OFF THEIR COASTS

The Government of the United States of America and the Government of Canada.

Considering that both Governments have established exclusive fishery zones;

Recognizing that fishermen of the two countries have traditionally fished for the same species in certain areas now encompassed within the exclusive fishery zones;

Deeming it desirable to establish the terms and conditions under which nationals and vessels of each of the two countries may conduct, on a reciprocal basis, commercial fishing operations within certain areas off their coasts; and

Having in mind the mutuality of interest on the part of the two countries in the conservation and rational exploitation of certain living marine resources off their coasts:

Have agreed as follows:

1. For the purposes of this Agreement,

- a. The reciprocal fishing area of the United States of America shall be the fishing zone established in 1966 south of 63° north latitude;
- b. the reciprocal fishing area of Canada shall be as follows:

(i) in those "Areas" listed in Order-in-Council P.C. 1967-2025 and Order-in-Council P.C. 1969-1109, issued by the Government of Canada on



November 8, 1967, and June 11, 1969, respectively, those waters extending 9 miles seaward of the territorial sea of Canada as it existed in 1966;

(ii) in those areas not listed in the Orders-in-Council cited above, those waters south of 63° north latitude which are contiguous to and extend from three to twelve miles from the coast of Canada, with the exception of bays where they cease to exceed 24 miles in breadth.

Nothing in this Agreement shall affect waters other than those referred to in this paragraph.

2. Nationals and vessels of each country may continue to fish within the reciprocal fishing area of the other country, except that there shall be no such fishing for the following:

a. any species of clam, scallop, crab, shrimp, lobster or herring;

b. any salmon other than salmon taken by trolling off the Pacific coasts of the United States and Canada west of a line joining Bonilla Point and Tatoosh Island; north of a line projected due west from Carroll Island (latitude 48° 00.3' North, longitude 124° 43.3' West) and south of a line projected from Bonilla Point to the intersection of the outer limits of the reciprocal fishing areas of the United States and Canada (latitude 48° 29.7' North, longitude 125° 00.7' West);

c. any black cod other than:

(i) a catch not to exceed 30,000 pounds annually taken by longline or pot gear off the west coast of Alaska between lines projected southwest (225° true) from Cape Ommaney and Cape Bingham respectively during the open seasons specified for fishing for black cod in the adjacent territorial sea; and

(ii) a catch not to exceed 15,000 pounds off the west coast of Vancouver Island between lines projected southwest (225° true) from Estevan Point and Cape Scott respectively;

d. any tuna other than a catch not to exceed 500 tons annually taken south and west of a line projected due east from Chatham Light on Cape Cod. Not more than two Canadian vessels exceeding 150 feet in overall length may take tuna within the area described, and only at such times and in the same general area as that in which United States tuna vessels exceeding 150 feet in overall length are fishing.

Subject to its domestic legislation, each Government will continue to permit transfers of herring between nationals and vessels of the two countries within the reciprocal fishing areas. The Governments agree that the principal purpose of this provision is to enable the continuation of transfers of herring intended for purposes other than reduction.

3. Nationals and vessels of either country will not initiate fisheries within the reciprocal fishing area of the other country for species which are fully utilized by fishermen of the latter country. If fishermen of either country wish to initiate a fishery within any part of the reciprocal fishing area of the other country for species not fully utilized, their Government will first consult with the other Government and reach an understanding concerning conditions for such a fishery.

4. Regulations established by one country pertaining to the taking or possession of fish within its reciprocal fishing area shall apply equally to the nationals and vessels of both countries operating within such area; in areas of the reciprocal fishing area of Canada in which Canadian domestic regulation at present prohibits trawl fishing by vessels exceeding 65 feet in length, such fishing by United States vessels exceeding 65 feet is also prohibited. These regulations shall be enforced by the Government which issued them. Should either Government consider it necessary to alter such fishery regulations, that Government shall notify the other Government of such proposed changes 60 days in advance of their application. Should such changes in fishery regulations require major changes in fishing gear, an adequate period of time, up to one year, will be afforded the nationals and vessels of the other country to adapt to such changes prior to their application.

5. The two Governments recognize the desirability of coordinating their regulations for certain salmon fisheries and agree as follows:

a. the appropriate fishery management authorities of the two countries shall consult frequently with a view to co-ordinating the regulatory measures to be applied by them to the fisheries for coho and chum salmon in British Columbia Statistical Area 20 and Statistical Areas 1 and 2 of the Washington State Department of Fisheries;

b. with respect to the chinook salmon fishery in the portion of Washington

State Statistical Area 1 bounded on the north by the international boundary, on the east by the lowwater line bordering the western and southern shores of Point Roberts peninsula, on the south by a line projected from Lily Point to Georgina Point on Mayne Island between Lily Point and its point of intersection with the boundary line, and on the west by the international boundary and, with respect to the chinook salmon fishery in British Columbia Statistical area 29, the appropriate fisheries officials of the two countries shall consult for the purpose of co-ordinating regulations regarding the open fishing days for the two specified areas. The Canadian officials, when designating the open fishing days for the specified Canadian area, shall give appropriate weight to the needs and interests expressed by the United States officials. The United States officials shall, to the extent consistent with the needs of the United States fishery, designate the same open fishing days for the specified United States area as are designated for the specified Canadian area and shall, in any case, designate the same number of open fishing days as designated for the specified Canadian area:

c. with respect to the chum salmon fishery in the section of Washington State Statistical Area 1 westward of Point Roberts peninsula, bounded on the north by the international boundary, on the east by the low-water line of Point Roberts peninsula, and by a line projected from Iverson Dock (Point Roberts) to Turning Point No. 1 of the boundary line in latitude  $49^{\circ} 00' 08.87''$  North and longitude  $123^{\circ} 19' 17.18''$  West, and with respect to the chum salmon fishery in British Columbia Statistical Area 29, the appropriate fisheries officials of the two countries shall consult for the purpose of coordinating regulations regarding the open fishing days for the two specified areas. The following provisions shall be applicable from a date agreed by the appropriate fisheries officials of the two countries, which date shall be no earlier than the fifth and no later than the fifteenth of October:

(i) The Canadian officials, when designating the open fishing days for the specified Canadian area, shall give appropriate weight to the needs and interests expressed by the United States officials;

(ii) the United States officials shall designate the same open fishing days for the specific United States area as are set for the specified Canadian area.

6. The two Governments recognize the importance of maintaining the fishery resources in their reciprocal fishing areas at appropriate levels. Both Governments agree to continue and expand co-operation in both national and joint research programs on species of common interest off their coasts. The appropriate agencies of the two Governments will arrange for exchanges and periodic joint reviews of scientific information.

7. Nothing in this Agreement shall prejudice the claims or views of either of the parties concerning internal waters, territorial waters, or jurisdiction over fisheries or the resources of the continental shelf; further, nothing in this Agreement shall affect either bilateral or multilateral agreements to which either Government is a party.

8. This Agreement shall enter into force on June 16, 1973, and shall remain in force until April 24, 1974. Representatives of the two Governments shall consult prior to expiration of the period of validity of this Agreement with a view to possible amendment and/or extension. However, if the Government of Canada gives notice to the Government of the United States of America of intent to extend its surfines off the west coast of Vancouver Island, and/or extends the troll season for salmon off the west coast of Vancouver Island, the Government of the United States of America may give notice of termination of the Agreement, which termination shall take effect 60 days after the giving of such notice.

In Witness Whereof the respective representatives have signed this agreement.

Done in two copies at Ottawa this 15th day of June 1973, in the English and French languages, each language version being equally authentic.

En Foe De Quoi les fondes de pouvoir respectifs ont signe le present Accord.

Fait en double exemplaires a Ottawa l 15 ieme jour de juin 1973, en francais et en anglais, les deux versions faisant egalement foi.

ADOLPH W. SCHMIDT,

*For the Government of the United States of America.*

*Pour le Gouvernement des Etats-Unis d'America.*

D. C. LUCAS,

*For the Government of Canada.*

*Pour le Gouvernement du Canada.*

Mr. ANDERSON. Any further comments?

Thank you very much.

At this time we will have Mr. Howard Pollock, Deputy Administrator, National Oceanic and Atmospheric Administration.

# **STATEMENT OF HOWARD W. POLLOCK, DEPUTY ADMINISTRATOR, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION**

Mr. POLLOCK. Thank you very much.

With your permission I will shift back to the original subject, which was House Con. Res. 157 and the associated resolutions.

I have with me on my left, Herbert L. Blatt from our Office of General Counsel in NOAA, and on my right, Dr. Robert F. Hutton, from the National Marine Fisheries Service.

I have also back here Kip Robinson, who is with our NOAA Office of Congressional and Legislative Affairs.

Mr. Chairman and members of the committee, we appreciate the opportunity to comment on House Concurrent Resolution 157 and the other similar resolutions. We welcome this expression of support by the Congress for actions directed at the conservation of our fisheries and the improvement of our fishing industry. We welcome the statement of facts highlighted by the resolution, which indicates the many problems which must be confronted.

These are not new problems, nor are they easy problems to resolve. The thing that makes these problems difficult to solve is that they are all highly interrelated, and solving one of them does not necessarily bring about the end that we are all seeking, which is both the protection of the resources and the revitalization of the industry. What must be done is to attack the root causes of which the problems that are enumerated in the Resolution are but symptoms. The root causes are due to the fact that fishery resources in the open ocean are common and available for the taking by all who wish to exploit the resource.

What is needed are systems of management of these resources which will provide the incentives necessary to enable a free enterprise fishing industry, such as that of the United States, to thrive and prosper. What we need are management systems which will encourage the flow of investment of private capital and at the same time prevent the kind of overfishing which today is rapidly destroying many of our most valuable fishery resources.

We are trying to get at these root problems in a number of ways. Our first goal must be to secure appropriate national and international controls over the resources. Without such controls our management systems will continue to be weak. They will become the product of the lowest common denominator of competing interests. Therefore, the United States has adopted as its long-range goal, international agreement on the jurisdiction and control over ocean fishery resources through the United Nations Law of the Sea deliberations which will start in New York this year. Our position is firm and simple. We seek coastal nation control over coastal species, coupled with a coastal nation preference to the fish. We seek control by coastal nations of origin for anadromous species and international



control over highly migratory oceanic species that are, pelagic, such as tuna.

We recognize that attainment of these objectives is some years off. In the interim, we are moving in several directions. First, we are seeking to create a new State-Federal management program for species within the territorial seas and the contiguous zone and beyond. As a first step to securing adequate authority for the State-Federal management program, President Nixon has this year submitted his High Seas Fisheries Conservation Act. Today there is inadequate legal authority to permit the U.S. Government to join with the States in the management of our coastal fisheries. It is my hope that the Congress will pass this bill.

Secondly, we are taking increasingly strong positions within the many international fisheries commissions to secure for our fishermen a fair share of the catch and the necessary protection of the stocks. As an example, I would like to submit for the record the statement issued by Secretary Dent on the need to reduce total foreign fishing effort off the East Coast. This statement was issued in connection with the meetings of the International Commission for the Northwest Atlantic Fisheries (ICNAF) now going on in Copenhagen. We believe that the major fishing nations of the world must recognize their responsibilities for the preservation of the resources.

Mr. ANDERSON. Without objection, it will appear in the record at this point.

[The statement referred to follows:]

STATEMENT OF SECRETARY OF COMMERCE FREDERICK B. DENT ON THE  
NORTHWEST ATLANTIC FISHERIES

The increasingly deteriorating situation facing the fish stocks and the fishing industry along the East Coast of the United States is a matter of deep concern to me and to the Nation.

The stability of our traditionally rich fishing grounds in the Northwest Atlantic on which the fishing industry along our East Coast depends, is seriously threatened.

The United States has been seeking international agreement for many years on steps that would insure meaningful conservation of the fisheries off our shores and would provide our fishermen with a fair share of the stocks. Although some progress has been made in establishing quotas of catches on major commercial species and in establishing other regulations within the International Commission for the Northwest Atlantic Fisheries (ICNAF), our continuing scientific studies convince us that these measures are inadequate to protect either the resource or our industry.

Major reductions in the total foreign fishing effort off our shores are urgently needed.

The basic purpose of ICNAF is to provide wise management of the fisheries off the East Coast of North America. On the basis of its performance from 1949 to the present, I find that management of these resources has not reflected the need for their conservation and the economic interests of the coastal state.

Our confidence in the ability of ICNAF to provide management equitable to our fishermen and conserve fisheries resources will be tested in the Annual Meeting of ICNAF to be held starting June 5, 1973, in Copenhagen, Denmark.

We cannot continue to see the fishery resource or the livelihood of the U.S. fishermen threatened by a lack of affirmative action on the part of the members of ICNAF. The precarious state of certain resources in the Northwest Atlantic calls for immediate restraint and enlightened conduct by all nations which share in their harvest.

Proposals by the United States for action to reduce total fishing effort, as well as to take other regulatory and inspection measures, will be presented at the ICNAF Meeting.

Unless we can obtain adequate assurances through international agreement at the forthcoming meeting of ICNAF, and thus halt the systematic overexploitation of the fisheries resources off the U.S. East Coast, continued participation by the United States in ICNAF will have to be seriously reconsidered.

Mr. POLLOCK. Thirdly, we are seeking to work closely with industry to provide assistance of many kinds to enable the fishing industry to prosper. We are conscious of the high insurance rates and we have held conferences with representatives of the insurance industry and the fishing industry to identify the problems and begin to develop solutions. We are seeking to expand the export markets for underutilized species of fish off our coasts with some indications of progress. We are seeking to protect fisheries habitats through our actions on environmental problems which impact our fisheries.

We believe that a resolution such as that under consideration by your committee can have substantial beneficial effects by alerting all who are interested and concerned about our fisheries—domestic and foreign—that the Congress of the United States is deeply concerned and prepared to take action.

Thank you, Mr. Chairman.

Mr. ANDERSON. Mr. Pollock, in view of the fact that we just have a quorum call, we are going to recess at this time for 15 minutes, go over and answer the call, and reconvene because a number of the members want to ask you some questions.

At this time the Chair will declare a 15 minute recess, and we will be back at 12:20, and you will be right where you are now.

[Short recess.]

Mr. STUDDS [presiding]. The subcommittee will come to order. The hearings will resume.

I have a couple of questions, Mr. Pollock, if I may, on your testimony.

On page 3, having spoken prior to that in your testimony about the objectives which we seek to accomplish on behalf of our fisheries, you say you recognize that attainment of these objectives is some years off.

In the interim we are moving in several directions. First, we are seeking to create a new State-Federal management program for species within the territorial seas and the contiguous zone and beyond.

Now, I cringe, as you might imagine. I saw your next sentence, and realized you were referring to the administration's High Seas Fisheries Conservation Act.

As I understand it, the only thing that act does beyond the contiguous zone is to give us power to arrest American fishermen, is that correct?

Mr. POLLOCK. That is a correct statement today, with the exception of situations where we have bilateral or multilateral agreements with other nations in areas where there was a violation.

Mr. STUDDS. Except most of the bilaterals I am familiar with are enforceable only by the nation whose vessel violated the agreement, is that not correct?

Mr. POLLOCK. The arrest might be accomplished by the U.S. Coast Guard, as an example, but the trial would be by the nation of the flag vessel.

Mr. STUDDS. Right. You can imagine the difficulty any of us would have in suggesting to an American fisherman, particularly

in New England, that what this Nation needs now is further power to arrest them.

Mr. POLLOCK. Well, the problem is a lack of jurisdiction in the fisheries contiguous zone much more so than the area beyond, so that if we are going to have a good management program, we have to assume that we are going to be doing it for the benefit of the fishermen and the fishing industry in general, not for the benefit of the Government.

We are concerned about the conservation of resources. We are concerned about compliance with the laws and regulations so that we can conserve the resources, and this is part of what we think is necessary for an entire management program.

You might be interested, Mr. Chairman, to know that both the Pacific Marine Fisheries Commission and the Gulf Coast Marine Fisheries Commission each have endorsed the provisions of this bill and are supporting it.

Mr. STUDDS. I am sorry to hear that. We will speak with them. I do not know if they have read it.

There are some members of this committee who were astonished to see what was in it when we had the first days of hearings. At least for the New England fishermen it does not speak to the problem of depletion of the stocks which is occurring well beyond the contiguous zone on the part of foreign vessels.

Mr. POLLOCK. Well, this is not a cure-all for problems, but it is one of the necessary management tools in a total complex of requirements.

Mr. STUDDS. Well, I might be prepared to grant that, in terms of the final package of arrangements that need to be made throughout the fisheries, but certainly at this point I think the principal accomplishment might be insurrection on the part of what is left of the New England fishing fleet if we were to take this step without preserving the resources on which their livelihood depends.

You say you are submitting for the record a statement issued by Secretary Dent in Copenhagen.

Is he over there too on the need to reduce foreign fishing efforts off the east coast? We are prepared to get "pretty tough" if they do not live up to their agreement. In the State Department that means deeply regretting something. If it really gets out of hand they deplore it.

What do you mean by "drastic action"?

Mr. POLLOCK. I will try to respond for NOAA. I cannot speak for the State Department, but I can for NOAA and for the National Marine Fisheries Service.

We have already given to our ICNAF Commissioners and cleared with them a statement for submission to the Commissioners of the 15 other nations, containing some information we feel is necessary in modifying the existing regulations of ICNAF to protect various species of stocks; and they range from total quota limitations to limitations on specific species, reduction in quotas, change in the particular kind of gear that is being used, closing of some areas to fishing, the whole combination of these things; and we are going forward with a proposal to ICNAF to say that these things are mandatory.



If they are not adopted there is no use for ICNAF to stay in existence. We see no purpose in it if it is going to simply be a meeting place once a year.

Mr. STUBBS. I think the fishermen would agree with that, but having said that, then what do we do?

Mr. POLLOCK. Well, there are several alternatives. I do not want to prejudge what is going to happen over there. I just returned to the United States last evening from the other direction. I do not know the progress of the ICNAF negotiations.

I will ask my colleagues to check the correctness of my statement, but if we are not satisfied with the progress that is being made, and that means some precise concrete suggestions, changes in the regulations, then we are, in fact, prepared to give notice of our intent to withdraw from ICNAF.

If we do this before July, we have 6 months in which to exercise that option, that is before the end of the year. If we go to that stage, and still want to try to salvage something of this whole international relationship prior to the Law of the Sea Conference being successfully concluded, then there are other options we could still have.

We could call for a plenipotentiary meeting of nations to, in effect form a new organization under different rules. This would elevate the forum from the scientists to the ambassadorial level.

There are a number of pressures that we can apply.

I think if we were simply to walk away from ICNAF, and just let the rest of the nations either have it, or let it fall apart, we would obviously not have a good situation, because there would be no international agreements for this area other than bilaterals we might be able to make on certain species with certain nations.

That is a way down the road. It could be accomplished.

Mr. STUBBS. Should that occur, should the United States conclude that ICNAF was without any chance of success, and should we give notice of intending to withdraw, do you think then the administration might change its position with respect to the possibility of interim unilateral action on the part of this nation?

Mr. POLLOCK. I think that is very difficult to say. I think it would continue for a time to have some reluctance, because of our distant water fisheries and our anadromous fisheries, but it is a problem of timing.

Again, if I might use the analogy of the football game, you cannot prejudge the final score, and cannot go in and tell your opposing team that these are the signals you are going to call, and these are the plays you are going to make.

Mr. STUBBS. I understand that, but there are 30 seconds left in the fourth quarter, and you guys have been in a huddle all day.

Mr. POLLOCK. Mr. Chairman, I have the deepest kind of sympathy for the fishermen.

I personally worked in the fishing industry for a number of years before I came to Congress, and I would like to say this, that while we certainly have problems, and we have been having them for some years, we are not now suddenly number six in production in fish. We were when I first came to Congress, and that was almost 7 years ago.

We have been working on a number of the problems. While the production has gone down, the income has not. It has actually increased for the fishermen.

This is not to say we have no problem. We have some very serious problems, but in my humble estimation we are not going to go out of business in the next 3 to 6 months. We are trying very hard to correct the problem we have, and we are using the best tools that we have or know about.

If we do anything unilaterally, then we have to face the consequences of other countries doing the same thing, and we are trying to work out a solution within the framework of international understanding, agreement, and conservation.

Mr. STUDDS. I understand that.

Mr. POLLOCK. Otherwise, in the future there may be no fish to take.

Mr. STUDDS. But everyone representing the administration has said to us that it is not a question of 3 months to 6 months. It is more like a question of 5 or 6 years or more.

Mr. POLLOCK. That is correct, and my personal view is that it is more time than that, because it will take us a year to 2 years to achieve an agreement, if indeed we will have one, and then after the nations do sign it, it will be a number of years probably, 4 or more before ratification would take place.

Unquestionably, there are people within Government and without who might disagree with me, and who might feel that it can be done quicker. In any event it is pretty obvious to me we do need interim solutions.

I tried to talk in my prepared testimony about a number of things that can be done, and we certainly do not have all the answers. We welcome suggestions from you and the other members of Congress and from industry.

We are working very closely on a continuing basis with the regional commissions we talked about before. We use them as a coordinating and contacting function, separate and apart from our own activities in the different regions off the coast of the United States, to talk with the fishermen, with the cannerymen, with the processors, with the boat owners. We are all searching for solutions.

I do not have the magic formula. I wish I did.

Mr. STUDDS. I suspect that some of us on the committee sound oversimplistic to some of the spokesmen for the administration, but as you realize, there is a fairly simple problem, at least in its broad outlines, facing us.

If you follow the curves of the catch in the New England fisheries, and if we wait the length of time you suggest we have to wait, we are going to catch minus fish long before that time arrives.

Mr. POLLOCK. A number of nations, Russia, as a prime example, engage in what is called pulse fishing, and they will go into an area where there is an abundance of fish, because it is economically feasible to do so without any concern whatsoever for conservation, and when the stocks get low, they move on.

Mr. STUDDS. This is perfect testimony for our legislation.

Mr. POLLOCK. At some point these nations are going to have to move out because it is not economically feasible. It is certainly

not one of the things we are trying to do on an interim basis, but it is a worrisome fact of life.

Mr. STUDDS. I understand that. I have yet to hear any proposal on an interim basis before this committee that would directly deal with the problem confronting the New England fisheries, for example, the disappearance of the fish.

Mr. POLLOCK. Well, if we can get, first, a reduction in catch, which is one of the things we are trying to do in ICNAF, reduction in catch by species, a reduction in overall catch, a reduction in incidental species through use of different gear, we are going to accomplish this to a great extent.

We believe, perhaps parochially, but I believe properly, that in some of the fishing areas some of the species of fish that are to be taken should be taken only by American fishermen, because they have been taken traditionally by them before the other fishermen came in.

If we start to reduce the quotas and tell the other nations to stay out of certain areas, we will resolve some of the problem.

This is what we are trying to do now in Copenhagen.

Mr. STUDDS. One final thing. I notice what may or may not be a significant break in the solid position of the administration on legislation before this committee.

You express support for the resolution, and the State Department expresses its usual caution, reservations, as you know.

The State Department is apparently opposed to the resolution as it passed the Senate, and is even worried about it in its blander form as introduced in the House.

Mr. POLLOCK. I believe the witness for the State Department indicated he was not prepared to testify.

Mr. STUDDS. At that moment.

Mr. POLLOCK. Also, I believe he was only testifying with reference to the amendments that were passed by the Senate, and I think that that was consonant with their general approach and that of the entire U.S. delegation to the U.S. Seabeds Committee that we do not want at this particular juncture to take unilateral action which will in the long phase do more harm than good for our fishermen.

Mr. STUDDS. I appreciate that, but I think I am correct in pointing out a difference in the position of NOAA. During the testimony of Mr. Moore the official comments of the Department of State, which had been requested by the committee, did arrive, and Mr. Wright's letter from the State Department says the Department believes that section 1 suggests possible implementation of unilateral action, and we therefore recommends that section 1 be modified by adding the words, "consistent with international law."

This is a passionate concern for international law that the State Department has not indicated in other areas of the world. The bill as it passed the Senate stated that the Congress is fully prepared to act immediately to provide interim measures to conserve over-fished stock, and to protect our fishing industry.

The State Department suggests we strike that phrase and add, "consistent with international law."

Would you be prepared to support the resolution even with the wording of the Senate?



Mr. POLLOCK. Well, Mr. Chairman, I think we would concur with the State Department in their concern that immediate interim action could be bad, depending on what was done.

If we, as an interim action, declared a 200-mile zone, I think this would be detrimental in the longrun to our ultimate objectives.

I want to point out also, Mr. Chairman, that while we are sitting here before this committee concerned with the fishing interests of the United States and the Law of the Sea Conference, there are at least five other major interests, and we have to work with all of these as a package.

I think if we went to the Law of the Sea Conference and allowed each subject to be handled separately, we would end up in a very difficult position.

Mr. STUDDS. Let me ask you the precise question again.

Your testimony is in support of the House resolution before us. The Senate has passed that resolution with the addition of the words I read to you.

Would your support also apply to our resolution if we were to amend it to include the Senate wording?

Mr. POLLOCK. Well, I am sure we would support the resolution in total. However, we would be concerned about your adopting the Senate amendment that was on page 3 of the Senate resolution for the reason that I stated.

Mr. STUDDS. I cannot widen that gap any further. I appreciate that.

I just have the feeling that if the Department of State had one iota of the interest that it expresses for the most dubious reasons in other areas of the world we probably would be carpet-bombing those trawlers off there. The passionate, detailed concern for international law which is expressed at great length before this committee whenever we raise a question of unilateral interim action so that we will have something to negotiate about in 1974 and 1975, that concern evaporates in other areas of the world.

I appreciate your testimony. We once again have a vote on the floor.

Mr. POLLOCK. In closing, I would like to say if I might, that we are obviously interested in searching out interim measures, including those which that Senate amendment talked about.

It is talking about acting immediately to provide interim amendments. Some of them could be very helpful, and some could be very detrimental.

Mr. STUDDS. I know this committee would be delighted to receive a recommendation for any interim measure of any kind from any representative of the administration, and to date this year we have not had any.

If you think that is a nice idea, let us know what you would like to do.

Mr. POLLOCK. I appreciate what you are saying, and I want to turn the pancake over, if I might, and say we would be delighted at any suggestions from the committee that might help in this complex situation.

Mr. STUDDS. You will receive them, a great number.

Mr. EVERETT. I have just a couple of comments.

Mr. Pollock, after you have had a chance to reflect on the bill, I wish you would assist us in drafting service without OMB clearance, to maybe consider some additions to the bill, if you think it would be appropriate.

Mr. POLLOCK. I am not sure I understand you.

Mr. EVERETT. We are still in sixth place among the leading fishing nations of the world rather than ninth.

Mr. POLLOCK. Oh, all right.

Mr. EVERETT. There are other things to be considered too such as estuarine areas, anadromous Fish Conservation Act, the Atlantic Gulf and Pacific States Marine Fisheries Compacts. We have also the fisherman's loan program to consider. This program has a \$40,000 limitation on its loans and has had an adverse effect on our fisheries program.

We also have problems with insufficient funding for the fisheries loans program and no funding at all for the fishing and the construction subsidy program.

Also, should we require in the legislation the State Department to seek bilateral agreements with other foreign nations fishing off our shores, similar to the ones we have with Poland, Russia, and Japan, as a means of trying to protect our fishery resources?

There are a number of things like this that maybe you could help us with by providing a drafting service for the committee. In this fashion, I think we could strengthen the resolution considerably.

Mr. POLLOCK. Do you mean to put into the resolution the existing laws that are in effect, or are you saying something different?

Well, it could be that. We only mentioned one, Commercial Fisheries and Research and Development Act.

Mr. EVERETT. There are other acts that are helpful to the U.S. fishermen, and these are the concepts I was trying to get at, and if you could give some thought to other things that should be included in the whereas provision, or in the body of the current resolution as well, it would be helpful.

Mr. POLLOCK. We'll be happy to do that.

#### POSSIBLE AMENDMENTS TO H. CON. RES. 157

SEC. 2. The Congress also recognizes and supports the responsibilities of the several States for the management of fisheries resources within United States territorial waters and particularly encourages cooperative interstate efforts to institute more coordinated conservation programs using existing interstate commissions and organizations and such other cooperative agreements as may be appropriate.

SEC. 3. The Congress also supports the Federal efforts to improve programs for the protection, enhancement, and scientific management of all United States fisheries, both coastal and distant. The Congress particularly notes the success of programs carried out under the Commercial Fisheries Research and Development Act, the Anadromous Fish Conservation Act, and the Fishermen's Protective Act and supports the newly developing State-Federal Fisheries Management Program. The Congress encourages increased efforts in those Federal programs designed to provide more research data necessary for implementing meaningful domestic and international conservation programs and likewise supports increased efforts in enforcing domestic and international fisheries management agreements. The Congress is concerned, however, about the lack of Federal effort to improve the quality and competitive status of the United States fishing fleet and similarly strongly urges full implementation of existing authorities designed to ensure a high quality marine environment, particularly

the Coastal Zone Management Act of 1972 and the Marine Protection Research and Sanctuaries Act of 1972.

SEC. 4. The Congress supports more Federal efforts in encouraging foreign countries that fish off the coasts of the United States to enter into and abide by bilateral and multilateral agreements with the United States Government for the conservation of fisheries resources. The Congress further urges a strong defense of the United States interests in all international negotiations.

Mr. EVERETT. I have no more questions Mr. Chairman.

Mr. STUDDS. Thank you for your patience in waiting for us. I hope your presence is ominous. When I was a little boy and went fishing and caught the fish whose name you bear, I always threw it back. Now, we keep it.

Mr. POLLOCK. Some years ago when I had the privilege of going to MIT, I frequently went over to the coast of Massachusetts and Maine with light fishing tackle and fished for my namesake the pollock.

Mr. STUDDS. Thank you very much.

The hearings are in recess, subject to the call of the Chair.  
[The following was submitted for inclusion in the record:]

U.S. DEPARTMENT OF COMMERCE,  
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION,  
Rockville, Md., April 11, 1973.

HON. JOHN D. DINGELL,

*Chairman, Subcommittee on Fisheries and Wildlife Conservation and the Environment, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.*

DEAR MR. DINGELL: This correspondence is in reference to my appearance before the Subcommittee on Fisheries and Wildlife Conservation on August 11, 1972. Among the key issues raised during my testimony regarding extension of the Commerical Fisheries Research and Development Act (P.L. 88-309) were Florida's marketing and extension activities funded under this legislation. More recent discussions concerning the State's approved project (No. 2-191-D, "Fisheries Extension and Marketing Services") between our staff, Mr. Randolph Hodges, and others have set forth a mutual understanding regarding the use of Federal funds for this project.

The questionable issue centered on the definition separating marketing and extension activities, and on the level of funding for marketing activities insofar as Florida's project is concerned.

We are interpreting as extension and not marketing those activities which disseminate information to teach professional foods people and educators the proper methods and techniques in purchasing, handling, storage, and preparation of fishery products for consumption. These activities would include demonstrations before home economics teachers, agricultural extension agents, utility home economists, State and institutional dieticians, State and Federal purchasing agents, and school lunch supervisors. The objective here is to provide technical assistance through an educational process.

We interpret marketing to be those activities which are designed to reach the consumer to encourage consumption or use of fishery products. Approvable marketing activities include contacts with newspaper and magazine food editors, food chain merchandisers and executives, wholesalers, and appearances on television and radio. Marketing activities which are not approvable under this project include such items as purchase and distribution of newspaper mats and advertising materials, purchase of product samples, place mats, bumper stickers, and other give-away promotional materials. Also, payment for advertising space, seafood festivals, picnics, or similar sampling activities are not approvable under this activity.

Insofar as the effort of individual home economists is concerned, their time may be divided between marketing and extension activities so long as the share of time associated with marketing activities does not increase the total marketing effort to more than 25 percent of any given fiscal year apportionment. There is no ceiling on the expenditure of funds for extension activities, as well as for other nonmarketing research and development activities authorized



under the Act. The State will be expected to maintain records which will adequately support division of time or effort for individual home economists. Also, we will expect the records to be kept and made immediately available for audit upon request.

In view of the foregoing, we plan to continue Florida's marketing and extension activities under P.L. 88-309 without modification for the duration (approximately 2½ years) of the State's currently approved project.

Sincerely,

DAVID H. WALLACE,  
*Associate Administrator for Marine Resources.*

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PACIFIC MARINE FISHERIES COMMISSION,  
*Portland, Ore., June 7, 1973.*

HON. JOHN D. DINGELL,  
*Chairman, Subcommittee on Fisheries and Wildlife Conservation and the Environment, Longworth House Office Building, Washington, D.C.*

DEAR MR. DINGELL: On behalf of the Pacific Marine Fisheries Commission and its five Compact States, permit me to offer fullest possible support to House Concurrent Resolution 173, sponsored by the Honorable David Treen and 51 of his distinguished House of Representatives colleagues. This clear call for an expression of the sense of Congress that the United States wants and will have a strong fishing industry provides the foundation for establishment of a national policy to strengthen that industry and to preserve and protect our living marine resources against continuing encroachments by foreign fishing fleets. We consider this action particularly timely in view of forthcoming Law of the Sea negotiations, and other national and international efforts to protect marine resources and to improve their effective use for the benefit of mankind.

Our Pacific States particularly applaud Section 2 of the Resolution which states that "The Congress also recognizes, encourages, and intends to support the key responsibilities of the several States for conservation and scientific management of fisheries resources within United States territorial waters, and in this context the Congress particularly commends Federal programs designed to improve coordinated protection, enhancement, and scientific management of all United States fisheries . . ." This Congressional recognition of State responsibilities, and this encouragement of joint State-Federal interaction in fisheries research and management efforts, provides us a most welcome support for presently ongoing programs, and at the same time sounds the call for more extensive efforts to solve the problems that beset the American fishing industry.

We urge prompt and favorable action on this Resolution so that the House of Representatives may join with the United States Senate in this landmark concurrent expression of Congressional concern and intent.

Yours sincerely,

JOHN P. HARVILLE,  
*Executive Director.*

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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,  
*Providence, July 13, 1973.*

HON. DAVID C. TREEN,  
*Longworth Building,  
Washington, D.C.*

DEAR CONGRESSMAN TREEN: The State of Rhode Island wishes to support and encourage you in your endeavors regarding House Concurrent Resolution 173 and related legislation calling for a national policy with respect to support of the United States fishing industry.

The United States government has attempted through the International Commission for the Northwest Atlantic Fisheries and various bilateral agreements to prevent overexploitation of fish stocks by foreign fleets off our Northeast Coast to absolutely no avail. As you may be aware, with all of our various approaches, foreign fishing effort in the Northwest Atlantic in 1973 increased approximately twenty-five percent over that of 1971.

Our New England fishermen are now faced with quotas on haddock, yellow-tail flounder, cod, herring and sea scallops which are rigidly enforced. Although the foreign fleets supposedly follow the same quotas, it is impossible to in fact determine whether they do or not due to the lack of a proper enforcement system. In addition, it appears that foreign fishing may be seriously affecting Rhode Island's most important commercial species, the northern lobster.

Again I strongly support your efforts and will be pleased to assist you in any way possible.

Sincerely,

PHILIP W. NOEL,  
Governor.

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MARITIME TRADES DEPARTMENT,  
Washington, D.C., June 8, 1973.

HON. JOHN D. DINGELL,  
*Subcommittee on Fisheries and Wildlife Conservation and the Environment,  
Committee on Merchant Marine and Fisheries, House of Representatives,  
Longworth Office Building, Washington, D.C.*

DEAR CHAIRMAN DINGELL: The AFL-CIO Maritime Trades Department wishes to express its strong support for the passage of House Concurrent Resolution 157 and companion Resolutions which are designed to promote the growth and development of the U. S. merchant marine.

House Concurrent Resolution 157 would provide the United States with the planning and study framework for a meaningful analysis of the problems and needs of America's fishing industry.

The past decade has been one of stagnation and decay for America's fishing fleet. At a time when Americans are turning increasingly to fish as a staple of their diets, less and less of this fish is caught or packaged by U.S. workers.

This dependence on foreign fishermen has led to large unemployment among U.S. fishermen and to a rapidly increasing outflow in the United States balance of payments, to pay for our fish imports.

The most ironic fact is that the majority of fish we import is caught within 200 miles of our coastline, by huge modern fleets of European and Asian nations.

This dismal situation can only be corrected by prompt action and strong legislation. House Concurrent Resolution 157 would fulfill both these goals.

House Concurrent Resolution 157 and similar bills recognize the desperate need to upgrade U.S. fishery efforts. The Resolutions provide the guidelines for a nationwide planning and organizing effort to set the priorities for a revival of America's ocean fishing fleets.

In addition, the bills address the urgent need to halt the depletion of nearby offshore U.S. fish stocks by huge foreign trawlers.

Finally, the bills establish as a priority for the U.S., the need for "scientific management of U.S. fishing resources."

Once these studies have been completed, it will then be vital that the Congress implement these recommendations by strong legislation. Only in this manner can we begin an effective revitalization of the American fishing industry.

A Senate companion to this Resolution, which was introduced in the Senate early this year by Senator James Eastland and cosponsored by almost half the Senate, was strongly endorsed at the AFL-CIO Maritime Trades Department Executive Board Meeting in Bal Harbour, Florida on February 18, 1973. A copy of the MTD Resolution is enclosed.

We are confident that this bill will have the strong bipartisan support of the Congress.

We urge the Committee to recommend the passage and strongly support House Concurrent Resolution 157.

Sincerely,

O. WILLIAM MOODY,  
Administrator.

[Whereupon, at 1:20 p.m., the subcommittee recessed, subject to the call of the Chair.]





# FISH AND WILDLIFE MISCELLANEOUS

## Brazil Shrimp Agreement

FRIDAY, JULY 20, 1973

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON MERCHANT MARINE AND FISHERIES,  
SUBCOMMITTEE ON FISHERIES AND WILDLIFE  
CONSERVATION AND THE ENVIRONMENT,  
Washington, D.C.

The subcommittee met at 10:12 a.m., pursuant to notice, in room 133, Longworth Office Building, the Honorable John D. Dingell (chairman of the subcommittee) presiding.

Mr. DINGELL. The subcommittee will come to order.

This morning the subcommittee will commence hearings on H.R. 8529, a bill to implement the shrimp fishing agreement of this Nation with the Republic of Brazil.

It occurs to me that the Chair, at this point, ought to direct that the agreement with Brazil concerning shrimp, together with letters of transmittal from the White House and so forth, be inserted in the record.

[The bill and departmental reports follow:]

[H.R. 8529, 93d Cong., first sess.]

IN THE HOUSE OF REPRESENTATIVES

JUNE 7, 1973

A BILL To implement the shrimp fishing agreement with Brazil

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Offshore Shrimp Fisheries Act of 1973".*

### DEFINITIONS

SEC. 2. When used in this Act—

(a) the term "treaty" shall mean the Agreement Between the Government of the Federative Republic of Brazil and the Government of the United States of America Concerning Shrimp, signed on May 9, 1972, including related annexes, notes, and agreed minutes, as these documents may be amended from time to time;

(b) the term "shrimp" shall mean the shrimp *Penaeus* (M.) *duorarum* notialis, *Penaeus* brasiliensis, and *Penaeus* (M.) *aztecus* subtilis;

(c) the term "area of agreement" shall mean the area in which United States vessels carry on a shrimp fishery in the vicinity of Brazil, as described by the following boundaries: the waters off the coast of Brazil having the isobath of thirty meters as the southwest limit, the latitude 1 degree north as the southern limit, the longitude 47 degrees 30 minutes west as the eastern limit, and a line running from the point of 4 degrees 44 minutes north latitude, 51 degrees 30 minutes west longitude at an azimuth of 17 degrees to the point of 4 degrees 51 minutes north latitude, 51 degrees 28 minutes west longitude and thence at an azimuth of 43 degrees

to the point of 8 degrees 58 minutes north latitude, 47 degrees 30 minutes west longitude as the northwestern boundary;

(d) the term "vessel" shall mean every description of watercraft or other contrivance used, or capable of being used, as a means of transportation in water;

(e) the term "Secretary" shall mean the Secretary of Commerce or his delegate;

(f) the term "transship" shall mean the transfer of shrimp from one vessel to another vessel, or the receipt of shrimp by one vessel from another vessel;

(g) the term "fishing" shall mean the taking or attempted taking of shrimp by any means whatsoever;

(h) the term "vessel owner" shall mean any person, partnership, corporation, or association which is the owner of record of a vessel documented under the laws of the United States, except that, with respect to section 4 and 5 hereof, the Secretary may issue such regulations as he deems appropriate to cover applications for and issuance of letters of voluntary compliance and permits with respect to vessels owned by corporations which are owned or controlled by one or more other corporations;

(i) the term "regulations" shall mean rules and regulations issued by the Secretary from time to time as he deems necessary to carry out the purposes and objectives of the treaty and this Act; and

(j) the term "gear" when applied to any vessel involved in a violation shall mean any single set of net and doors for a single trawl vessel, or for a vessel capable of towing more than one net at a time, as many sets of nets and doors as the vessel is capable of towing: *Provided*, That if the vessel owner, master, or other person in charge of the vessel can show that a particular set (or sets) of net and doors was actually involved in the violation, then that set (or sets) shall be deemed to be the gear of the vessel involved in the violation.

#### PERMITS

SEC. 3. (a) The Secretary is authorized to issue permits to vessel owners for vessels documented under the laws of the United States to engage in fishing in the area of agreement: *Provided*, That the number of vessels which are the subject of permits shall not exceed three hundred and twenty-five or such other number of vessels as may be specified in the treaty from time to time as authorized to fish in the area of agreement. No vessel owner may be issued a permit with respect to a vessel unless such vessel meets the requirements of the treaty, the Act, and the regulations.

(b) Except as provided in section 4(d), a permit shall be valid only for the vessel with respect to which it is issued and shall not cover more than one vessel, except that a vessel owner may, with the prior consent of the Secretary, transfer a permit to another vessel whether or not owned by the same vessel owner.

(c) Permits shall be issued for a calendar year, and may be renewed annually.

(d) Permits shall contain such provisions, and shall be issued upon, and subject to, such terms and conditions as the Secretary deems necessary to carry out the treaty, the Act, and the regulations. Permit provisions may include, but are not limited to—

(i) the manner, place, and time of conducting fishing operations,

(ii) the keeping of records,

(iii) the furnishing of information to the Secretary,

(iv) the identification and marking of the vessels,

(v) limitations on transshipment operations,

(vi) restrictions or prohibitions on the employment of any permitted vessel of a master or other person against whom a civil penalty has been assessed pursuant to section 9,

(vii) prohibited activities,

(viii) revocation of permit for failure to pay a civil penalty assessed against a vessel owner pursuant to section 9, and

(ix) the maintaining of an office in the United States by the holder of a permit at which all notices, legal documents, and other material may be served.

Permits may be suspended or revoked by the Secretary for failure to comply with any of the terms or conditions thereof, or with the treaty, this Act or the regulations. Upon any such suspension or revocation, the permittee shall be afforded a prompt opportunity, after due notice, for a hearing by the Secretary. The decision of the Secretary rendered in connection with such hearing shall be final and binding.

(e) Permits may be returned to the Secretary. In addition, the Secretary may issue regulations requiring the return of unutilized permits under such circumstances and upon such terms and conditions as he deems appropriate. If the Secretary reissues a permit to another vessel owner, a prorated amount of the annual permit fee for the portion of the year during which the permit is held by another vessel owner shall be refunded to the original permittee. Except as specified in this subsection (e) and in section 4(c), permit fees shall not be prorated.

(f) The annual fee for a permit for any year other than 1973 shall be \$615 for enforcement service plus an amount of not more than \$100, as determined by the Secretary, for the purpose of covering administrative costs. The annual fee for a permit for 1973 shall be \$1,230 for enforcement services plus an amount of not more than \$200, as determined by the Secretary, for the purpose of covering administrative costs: *Provided*, That the annual fee for a permit for 1973 for any vessel first documented in that year or certified as not having been engaged in fishing in the area of agreement in 1972 shall be \$615 for enforcement services plus an amount of not more than \$100, as determined by the Secretary, for the purpose of covering administrative costs. The amount of any deposit transferred to the Offshore Shrimp Fisheries Fund pursuant to section 5 of this Act shall be credited toward the annual permit fee.

(g) Any permit which has been suspended or revoked, or which is required to be returned, shall be surrendered to the Secretary.

#### PERMIT PROCEDURE

SEC. 4.(a) Vessel owners may apply for permits to engage in fishing in the area of agreement. The method and time for application shall be announced in advance in the Federal Register.

(b) The owner of any vessel for which application for a permit is refused may petition the Secretary for reconsideration, and shall be entitled to a hearing. The decision of the Secretary rendered in connection with such reconsideration shall be final and binding.

(c) The Secretary may reissue permits which have been returned pursuant to section 3, to vessel owners with outstanding applications, who have not been able to obtain permits under the procedure set out in subsection (d). The fee for such reissued permits shall be the prorated share of the annual fee for the portion of the year during which the new permittee holds the permit.

(d) If application is made with respect to more vessels than the number of permits allowed to be issued under section 3(a), the following procedure for granting permits shall apply:

(1) All vessel owners to whom letters of voluntary compliance have been issued, pursuant to section 5 of this Act, shall have first priority for permits but only as to vessels covered by such letters.

(2) After all vessel owners under subparagraph (1) have been considered for permits, all vessel owners who have been engaged in fishing in the area of agreement, during the last five years, shall have second priority for permits. However, in no event shall a vessel owner be eligible for receiving a permit under this subsection for a given vessel during the first six months after the effective date of this Act if the Secretary determines that such vessel has engaged in activities during the period from May 9, 1972, to the effective date of this Act which would have constituted a violation specified in section 8(a) (3) or 8(a) (5), but only to the extent 8(a) (5) relates to use of fishing gear and the closure of the area of agreement to fishing, if the Act had been in effect during such period. In the event of any such determination, the vessel owner affected thereby shall be given notice thereof and an opportunity for a hearing. The decision of the Secretary rendered in connection with the hearing shall be final and binding.

(3) After all vessel owners under subparagraph (1) and (2) have been considered for issuance of a permit, all other vessel owners who have made application may be considered for permits.



If the number of vessels for which application is made in the categories outlined in subparagraph (2) or (3) is more than the number of permits available after having accounted for the vessels in the previous category (or in the case of subparagraph (1), if the number of vessels for which application is made in that category is more than the number of permits available pursuant to the treaty), then the number of permits available shall be proportionally distributed with the applicable category, in a manner provided in the regulations.

#### VESSELS WHICH VOLUNTARILY COMPLY

SEC. 5. The Secretary shall issue a letter of voluntary compliance to a vessel owner who has had vessels engaged in fishing in the area of agreement at any time subsequent to May 9, 1972, for all vessels of such owner documented under the laws of the United States which meet the requirements of the treaty, and for each of which the vessel owner has, prior to August 1, 1972, deposited and continuously maintained, until the transfer referred to in the following sentence, \$700 in a special account in a bank or trust company insured by the Federal Deposit Insurance Corporation for the purpose of reimbursing the United States for enforcement expenses as provided in article 6 of the treaty. On or before the issuance of a letter of voluntary compliance the deposited funds referred to above shall be transferred in the manner provided for in regulations, through the Secretary, to the Offshore Shrimp Fisheries Fund, established pursuant to section 6 of this Act.

#### OFFSHORE SHRIMP FISHERIES FUND; ENFORCEMENT EXPENSES

SEC. 6. (a) There is hereby established on the books of the Treasury a separate fund, the Offshore Shrimp Fisheries Fund, to be used by the Secretary to make payments for enforcement expenses as provided in article VI of the treaty. The fund shall be credited with permit fees collected pursuant to section 3 for enforcement expenses, funds appropriated under section 12(a), amounts transferred through the Secretary from deposits in the special accounts referred to in section 5, and amounts collected for minimum penalties pursuant to section 9.

(b) The Secretary of Commerce, through the Secretary of State, shall pay, or cause to be paid, on behalf of the United States the enforcement expenses as provided in article VI of the treaty.

(c) In the event that a vessel owner, master, or other person in charge of a vessel, pays on behalf of the United States the unusual enforcement expenses incurred in carrying out the seizure and detention of a vessel, referred to in article VI of the treaty, and is not assessed a civil penalty under section 9 of this Act within two years from the date of such seizure in respect to the violation for which the vessel was seized, such vessel owner, master, or other person shall be entitled to reimbursement of amounts so paid. Application for reimbursement shall be made to the Secretary.

#### INFORMATION AND REPORTS

SEC. 7. (a) Each master or other person in charge of a vessel which is the subject of a permit under this Act shall keep a logbook in the form and manner prescribed pursuant to the treaty and set forth in regulations.

(b) In addition to the logbook, owners of vessels which have permits under this Act shall supply to the Secretary, in such form and at such times as he may prescribe, any other information necessary in order to carry out the purposes and objectives of the treaty, the Act or the regulations, which information may include data on fishing beyond the area of agreement in order to determine to the extent possible the full potential of the shrimp fishery.

(c) Except as otherwise provided in the treaty, information obtained pursuant to this Act shall be treated as confidential commercial information pursuant to section 552 of title 5, United States Code.

(d) The Secretary shall have the power to require by subpoena the production of all such logbooks, records, or other information required pursuant to this section. The Secretary may delegate the power to sign subpoenas and to receive documents.

(e) In case of contumacy or refusal to obey a subpoena issued to any person, corporation, partnership, or other entity, the Secretary may request the Attorney General to invoke the aid of any district court of the United States or

the United States courts of any territory or possession within the jurisdiction of which said person, corporation, partnership, or other entity is found, resides, or transacts business to secure compliance.

#### PROHIBITIONS

SEC. 8. (a) No master or other person in charge of a vessel documented under the laws of the United States shall—

(1) engage in fishing in the area of agreement, unless the vessel is the subject of a permit in force pursuant to this Act;

(2) transship shrimp in the area of agreement, unless each vessel engaged in the transshipment is the subject of a permit in force pursuant to this Act, or is otherwise authorized to fish in the area of agreement pursuant to the treaty;

(3) assault or attempt to prevent any duly authorized officer from boarding, searching, seizing or detaining a vessel in accordance with such officer's duties under the treaty;

(4) engage in fishing in the area of agreement contrary to regulations establishing a procedure for limiting the number of vessels allowed to be present in the area of agreement at any one time to one hundred and sixty or such other number as may be allowed pursuant to the treaty;

(5) engage in fishing in the area of agreement in contravention of annex II, as it may be modified from time to time pursuant to article II of the treaty, or any regulations issued by the Secretary to implement such annex.

(b) No master or other person in charge of a vessel documented under the laws of the United States shall—

(1) fail or refuse to keep or provide any logbooks or any other information required pursuant to this Act, or provide or furnish false logbooks or other information;

(2) violate any other provision of the treaty, this Act, or any regulations promulgated by the Secretary, the violation of which is not covered by subsection (a).

#### PENALTIES

SEC. 9. (a) Any master or other person in charge of a vessel who violates section 8 hereof may be assessed a civil penalty by the Secretary, after notice and opportunity for a hearing, of not more than \$10,000 for a violation of section 8(a) and \$3,000 for a violation of section 8(b). Except as provided in this section, the minimum penalty assessed shall be not less than an amount sufficient to cover the unusual enforcement expenses, if any, incurred by the United States pursuant to article VI of the treaty in connection with such violation: *Provided*, That if the person against whom the penalty has been assessed has paid on behalf of the United States such unusual enforcement expenses, the minimum penalty requirement shall not apply. The amount of any such minimum civil penalty assessed shall be deposited directly into the Offshore Shrimp Fisheries Fund. The amount of any such civil penalty over the minimum penalty may be compromised by the Secretary.

(b) The Secretary shall notify any vessel owner involved in a violation of section 8 of the outcome of any proceeding under subsection (a) above.

(c) The Secretary, after notice and opportunity for hearing, may assess against a vessel owner a civil penalty equal to the value of the catch on board the vessel when detained and the value of the gear involved in a violation of section 8(a) (1), or involved in a second or subsequent violation of any other provision of section 8(a) by a person against whom a penalty had previously been assessed under section 9(a) for a violation involving the operation of a vessel owned by the same person as the vessel involved in such second or subsequent violation. The amount of any such penalty shall be deposited as miscellaneous receipts into the general fund of the Treasury.

(d) Upon failure of the party penalized as provided in this section to pay the penalty within thirty days of the assessment thereof, the Secretary may request the Attorney General to commence action in the Federal district court having jurisdiction over the party for such relief as may be appropriate. In any such action for relief, the Secretary's penalty assessment shall be final and unreviewable unless the penalized party has otherwise sought judicial review thereof.

(e) In any hearing held by the Secretary in connection with the assessment of a civil penalty hereunder, the vessel owner, the master of any person against whom a penalty may be assessed may appear in person or by counsel at such hearing or in lieu of a personal appearance may submit such affidavits or depositions as he deems necessary to the defense of any charges which may be considered by the Secretary at such hearing.

#### ENFORCEMENT

SEC. 10. (a) This Act shall be enforced jointly by the Secretary, the Secretary of the department in which the Coast Guard is operating, and the Secretary of the Treasury.

(b) Any duly authorized law enforcement officer of the Government of Brazil who is exercising responsibility under article V of the treaty shall be empowered to act on behalf of the United States to enforce the provisions of the treaty in the area of agreement as follows: Any such officer may board and search any vessel which he has reasonable cause to believe has violated any provisions of the treaty. If after boarding and searching such vessel the officer continues to have reasonable cause to believe that a violation has been committed, he may seize and detain the vessel for the sole purpose of delivering it, as soon as practicable, to an agent of the United States Government at the nearest port to the place of seizure or any other place which is mutually agreed upon by the Government of Brazil and the Secretary of State.

#### REGULATIONS

SEC. 11. In addition to any specific authority contained in this Act, the Secretary is authorized to issue all regulations necessary to carry out the purposes and objectives of the treaty and this Act. Prior to the issuance of any regulations dealing with the marketing of vessels or with the use of radio-telephone frequencies, the Secretary shall consult with the Secretary of the department in which the Coast Guard is operating.

#### APPROPRIATIONS

SEC. 12. a) There is hereby authorized to be appropriated such amounts as are necessary for enforcement expenses pursuant to article VI of the treaty, to be deposited in the Offshore Shrimp Fisheries Fund.

(b) There is also hereby authorized to be appropriated such amounts as are necessary or domestic enforcement expenses and the expenses of administering the provisions of the treaty, this Act, and the regulations, to be available until expended, when so provided in appropriation acts. So much of the permit fees as are identified for administrative costs shall be deposited as miscellaneous receipts to the general fund of the Treasury.

#### SEVERABILITY

SEC. 13. The provisions of this Act shall be severable and if any part of the Act is declared unconstitutional or the applicability thereof is held invalid, the constitutionality of the remainder and the applicability thereof shall not be affected thereby.

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[Executive Communication No. 969]

DEPARTMENT OF STATE,  
Washington, D.C., May 24, 1973.

HON. CARL ALBERT,  
*Speaker, House of Representatives,*  
Washington, D.C.

DEAR MR. SPEAKER: There is enclosed a draft of a proposed bill, "to implement the shrimp fishing agreement with Brazil".

We recommend that the bill be referred to the appropriate committee for consideration, and that it be enacted.

The Agreement between the Government of the United States of America and the Government of the Federative Republic of Brazil Concerning Shrimp, hereinafter referred to as "the Agreement", was signed at Brasilia on May 9, 1972. The Senate gave its advice and consent to ratification on October 3, 1972, and President Nixon signed the instrument of ratification on November 29. An exchange of notes bringing the Agreement into effect was completed on



February 14, 1973. The Agreement will be in effect until January 1, 1974, unless the Parties agree to extend it.

The Agreement was negotiated in response to the situation created when, in 1970, the Government of Brazil asserted a claim to a territorial sea 200 nautical miles in breadth, which was not recognized by the United States but which encompasses areas in which a large number of United States vessels have carried on shrimp fishing over the past decade. The purpose of the Agreement is to respond to the question of disputed jurisdiction between two friendly Governments by providing appropriate conservation safeguards for the fishery resource of common concern, principally by a limitation of fishing effort, while reserving the juridical positions of the Parties pending a general agreement of the nations on the extent of a coastal state's jurisdiction over resources like shrimp under international law.

It was judged reasonable and prudent to set limits, by interim agreement, to the further growth of fishing effort applied to the shrimp resource of common fishery and the almost complete lack of scientific knowledge concerning the interest, in view of the history of rapid development of the fleet engaged in the dimensions of the resource and its ability to maintain its productivity under heavy exploitation. However, there is at present no law under which the United States can limit the entry of its citizens and vessels into high seas fisheries in general or the high seas shrimp fishery in particular. The proposed legislation would empower the Government to impose such a limitation in the case of the shrimp fishery within the area covered by the Agreement.

Section 1 gives a short title for the proposed legislation.

Section 2 defines certain terms used in the bill. Of particular note is subsection (c), which defines the limits of the area to which the Agreement applies and to which the proposed legislation and any rules and regulations in implementation thereof would apply. The area as defined lies entirely beyond 12 nautical miles from shore, and therefore in the view of the United States entirely on the high seas, and encompasses essentially all of the major grounds traditionally fished by United States shrimp trawlers off the coast of Brazil.

Section 3 authorizes the Secretary of Commerce to issue annual permits for United States vessels, consistent with the numerical limit and other requirements prescribed by the Agreement, to fish within the area of the Agreement. Section 3(d) details some of the conditions which may be attached to the permits, all of which are necessary for enabling the United States to fulfill the terms of the Agreement or for the execution of other portions of the Act.

Section 3(e) authorizes the Secretary of Commerce to make regulations requiring the return of permits by vessel operators who do not make use of them and for their subsequent reissue to other operators for a prorated fee. Such a provision appears necessary since the Agreement places a limit on the maximum number of vessels that may be permitted to fish in the agreement area and there is a possibility that there may be a demand from the fleet operators for the total number of permits available. This provision would prevent the tying up of any of the available permits by operators who have no present plans to fish in the area but wish to prevent potential competitors from doing so.

Section 3(f) prescribes the fees for permits to fish under the terms of the Agreement. The basic fee is determined by a formula which would recover for the Government all costs of participating in the Agreement as well as a portion of the cost of administering the permit system, if the total number of 325 permits available under the Agreement were issued. (In the event that the number of permits issued is less than 325, an appropriation will be requested to make up the difference between the income from permit fees and the financial obligations of the Government resulting from the Agreement.) The permit fee for calendar year 1973 is set at a sum double the basic annual fee in recognition of the fact that the operators of a large number of vessels have voluntarily posted deposits equivalent to a year's permit fee to cover operations during the period between the signing of the Agreement and the anticipated enactment of this legislation. If the legislation is enacted, these deposits will be credited retroactively against the 1973 permit fees for those vessels. This provision will prevent vessel operators who do not post such deposits from enjoying a "free ride" during the period of voluntary compliance preceding enactment of the bill. Section 3(g) provides for the surrender of suspended or revoked permits to the Secretary so that they may be reissued.

Section 4 prescribes the procedures under which the Secretary of Commerce would issue permits for fishing within the area of the Agreement. Section 4(a) would ensure that interested vessel operators would have the opportunity to have knowledge of the method and time for applying for permits through publication of this information in the Federal Register. Section 4(b) provides that a vessel owner whose application for a permit is refused shall, upon his petition, be entitled to a hearing and reconsideration of his application.

Section 4(c) authorizes the Secretary of Commerce to reissue permits which have been returned to him to vessel owners who have applications pending. The recipient of such a reissued permit would have to pay a pro-rated share of the annual permit fee.

Section 4(d) provides a set of criteria for priority in the granting of permits, to be used in the event that applications are received for a greater number of permits than is available under the terms of the Agreement (325), an eventuality that is considered unlikely. First priority for permits will go to vessels which have been operated in voluntary compliance with the provisions of the Agreement, as certified in letters of voluntary compliance to be issued by the Secretary of Commerce in accordance with Section 5 below. Second priority will go to vessels operated by owners who, although not in possession of letters of voluntary compliance, have been engaged in the fishery during the past five years. However, no vessel will be eligible for receiving a permit during the first six months of operation of the permit system if the Secretary of Commerce determines that it has been operated subsequent to the signing of the Agreement in a way which constituted failure to voluntarily observe the terms of the Agreement in any one of the following three respects: (1) by fishing in the area of the Agreement during a closed season; (2) by using a type of fishing gear prohibited by the Agreement; or (3) by assaulting or attempting to prevent any duly authorized officer from boarding, searching, seizing or detaining the vessel in accordance with such officer's duties under the Agreement. The affected vessel owner shall be notified of any such denial of eligibility for a permit and given an opportunity for a hearing. The purpose of this subsection is to ensure that operators who flagrantly fail to observe the terms of the Agreement during the period of voluntary compliance shall not enjoy the same priority for the issuance of permits as those who have voluntarily complied in good faith with the Agreement prior to the enactment of this implementing legislation.

The final paragraph of this section (Section 4) provides that if the number of vessels for which applications for permits are received is greater than the number of permits available for issue within a given priority category, the available permits shall be suitably distributed among the applying vessel owners in an equitable fashion.

Section 5 authorizes the Secretary of Commerce to provide documentary evidence of voluntary compliance with the terms of Agreement to vessel owners who, subsequent to the signing of the Agreement and prior to December 31, 1972, deposited and retained \$700, approximately equivalent to the proposed annual permit fee, in a special bank account in respect of each of their vessels for which they intend to seek permit under this Act. The possession of such a letter of voluntary compliance would entitle the vessel concerned to priority in the granting of a permit, as provided in Section 4(d) (1) above. The issuance of a letter of voluntary compliance would be accompanied or preceded by the transfer of the deposited funds to the Offshore Shrimp Fisheries Fund, established pursuant to Section 6 below, for use in defraying the financial obligations assumed by the United States under the terms of the Agreement. Funds so transferred would be credited against the initial permit fee for the vessel in question.

Section 6 provides for the establishment in the Treasury of a special revolving fund, to be known as the Offshore Shrimp Fisheries Fund. Into this Fund would be placed the appropriate portion of permit fees, appropriated funds authorized under Section 12 of this Act, sums transferred from the special accounts set up, as provided in Section 5, vessel owners in voluntary compliance, and the minimum civil penalties assessed as provided in Section 9 against violators to cover the unusual enforcement expenses incurred by the United States pursuant to Article VI of the Agreement. These unusual enforcement expenses are \$100 per day during the period when any United States vessel considered to be in violation of the Agreement is in custody of Brazilian enforcement authorities. From the Offshore Shrimp Fisheries Fund

there will be paid by the Secretary of Commerce, through the Secretary of State, the annual payment of \$200,000 which the Agreement obligates the United States to make to Brazil for enforcement services. Also, if a vessel owner whose vessel is seized and detained pays the special enforcement expenses of \$100 per day on behalf of the United States, in order to expedite the delivery of his vessel to an authorized official of the United States in accordance with Article V(4) of the Agreement, and the vessel owner is not assessed a civil penalty for the alleged violation within two years, monies from the Fund would be used to reimburse the vessel owner.

Section 7 would place on any person in charge of a vessel which has received a permit under the Act the obligation of keeping a logbook record of his fishing operations in a prescribed form and would also require the owner of a permitted vessel to furnish to the Secretary of Commerce other information necessary for carrying out the provisions of the Agreement, this Act or related regulations, including data on operations in the shrimp fishery beyond the limits of the agreement area. All such information that fell within the proper legal categories for exception from the requirements of the Freedom of Information Act would be treated as confidential commercial information in accordance with relevant United States law, except insofar as the Agreement requires the United States to turn some portion of it over to the Brazilian Government, which has undertaken to protect its confidentiality. Section 7(d) would empower the Secretary of Commerce to subpoena the log books and other information referred to above, and Section 7(e) would authorize the Secretary, in cases where a person refused to obey a subpoena, to request the Attorney General to seek aid from U.S. district courts to secure compliance with the subpoena.

Section 8(a) prohibits the person in charge of any United States vessel from performing certain acts in the area of agreement. The prohibited acts are those which would be at variance with the obligations which the United States has assumed in the Agreement, to wit, (1) fishing without authorization, as indicated for U.S. vessels by a permit issued under this Act, (2) engaging in transshipment of shrimp with other than authorized vessels, (3) assaulting or otherwise obstructing the performance of enforcement duties by a duly authorized officer, (4) failing to observe regulations designed to limit the number of vessels operating in the area at any one time to that prescribed by the Agreement, or (5) fishing with a type of vessel or gear prohibited by the Agreement or during a time when fishing is closed by the Agreement.

Section 8(b) prohibits failure or refusal to keep or furnish information required by the Act or furnishing false information and, generally, the violation of any other provision of the Agreement, the Act or its regulations not specified above.

Section 9 sets maximum civil penalties which the Secretary may assess against the person in charge of a vessel for violations resulting from the commission of acts prohibited in Section 8, with the higher maximum of \$10,000 for acts violating the specific provisions of the Agreement and a lower figure of \$3,000 for acts not specified in the Agreement but inimical to its implementation. The section provides that when a violation entails the special enforcement expenses incurred by the United States pursuant to Article VI of the Agreement, the penalty must as a minimum be sufficient to cover such expenses, unless the owner of the vessel involved has already paid these enforcement expenses on behalf of the United States. The Section also provides for notification to vessel owners of the outcome of any proceeding against the person in charge of their vessel for commission of a prohibited act. In the case of a violation of the prohibition against fishing with an unlicensed vessel, or a repeat violation involving the commission of any other act prohibited by Section 8(a), when the person in charge of the vessel had previously been penalized for a violation committed with a vessel of the same owner, the Secretary may proceed against the vessel owner by assessing a civil penalty equal to the value of the catch and fishing gear. Section 9(d) authorizes the Secretary, through the Attorney General, to seek relief in the appropriate Federal District Court if the penalties assessed by him are not paid within 30 days. Section 9(d) also provides that, in such relief actions, a penalty assessed by the Secretary shall be final unless the party penalized specifically seeks judicial review of the Secretary's decision. Section 9(e) provides that



persons liable to a penalty may appear in person at hearings to be held by the Secretary or may submit affidavits or depositions in their defense.

Section 10 provides that the Act shall be enforced jointly by the Secretary of Commerce, the Secretary of the Department in which the Coast Guard is operating, and the Secretary of the Treasury. The enforcement responsibilities of the Secretary of Commerce are indicated in the other sections of this Act. The Coast Guard has responsibility for documenting United States vessels of the size that will operate in the shrimp fishery off Brazil. A vessel must be documented in order to apply to the Secretary of Commerce for a permit. Furthermore, under some conceivable circumstances enforcement action by the Coast Guard at sea or in port might be necessary to supplement the primary efforts of the Secretary and of the Brazilian authorities in order to secure custody of a vessel which was accused of violating some provision of the Act or the Agreement. Part (b) of the Section provides that a duly authorized Brazilian officer may act on behalf of the United States to enforce the provisions of the Agreement by boarding and searching, and if necessary seizing and detaining, a United States vessel which he has reasonable cause to believe has violated the Agreement. Vessels so seized are to be delivered as soon as practicable to the United States Government.

Section 11 authorizes the Secretary of Commerce to issue all regulations necessary for carrying out the purposes and objectives of the Agreement and the Act.

Section 12 authorizes the appropriation of the sums necessary to pay the Government of Brazil for its enforcement services, as provided in the Agreement, and for the expenses of administration.

Section 13 is a standard separability clause.

The Office of Management and Budget has advised that there is no objection to the presentation of the proposed legislation from the standpoint of the Administration's program.

Yours sincerely,

MARSHALL WRIGHT,

*Acting Assistant Secretary for Congressional Relations.*

[The bill became H.R. 8529.]

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GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,

*Washington, D.C., July 23, 1973.*

HON. LEONOR K. SULLIVAN,  
*Chairman, Committee on Merchant Marine, and Fisheries,  
House of Representatives,  
Washington, D.C.*

DEAR MADAM CHAIRMAN: This is in response to your request for the views of the Department of Commerce on H.R. 8529, a bill "To implement the shrimp fishing agreement with Brazil."

This proposed legislation, entitled the "Offshore Shrimp Fisheries Act of 1973", would implement the United States-Brazil shrimp fishing agreement and enforce it as to US fishermen. The agreement, signed by the two Governments on May 9, 1972, establishes a shrimp conservation zone off the coast of Brazil, within which the activities of shrimp vessels of the two countries will be regulated.

This Department was directly involved in the drafting of this legislation and is very strongly in favor of enacting H.R. 8529.

The fishing season in the shrimp conservation zone opened on March 1 of this year. Passage of this legislation is necessary for the United States to fulfill its obligations under the agreement, approved by the Senate on October 3, 1972, and ratified by the President on November 29, 1972.

Accordingly, we urge action on this bill at the earliest possible time.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of our report to the Congress from the standpoint of the Administration's program.

Sincerely,

KARL E. BAKKE,  
*Acting General Counsel.*

COMPTROLLER GENERAL OF THE UNITED STATES,  
Washington, D.C., August 9, 1973.

HON. LEONOR K. SULLIVAN,  
*Chairman, Committee on Merchant Marine and Fisheries,*  
*House of Representatives,*  
*Washington, D.C.*

DEAR MADAM CHAIRMAN: By letter of June 12, 1973, you requested our comments on H.R. 8529, 93d Congress, a bill which if enacted would be cited as the "Offshore Shrimp Fisheries Act of 1973."

H.R. 8529 would implement the shrimp fishing agreement signed May 9, 1972, by representatives of the Governments of the United States and Brazil. According to article XI, the agreement shall enter into force on a date to be mutually agreed upon by both parties and shall remain in force until January 1, 1974, unless the parties agree to extend it.

"Annex II" of the agreement provides that vessels employed in fishing for shrimp shall be of the same type and have the same gear as those commonly employed in this fishery in the past. In the agreed minutes relating to the agreement, it is stated that the expression "of the same type," included in Annex II in relation to United States vessels that have in the past fished in the area of the agreement, means vessels having a length up to approximately 85 feet. Section 2(d) of H.R. 8529 states that the term "vessel" shall mean every description of watercraft or other contrivance used, or capable of being used, as a means of transportation in water. Accordingly, this section of the bill appears to go beyond the provisions of the agreement because it implies that any size vessel may be employed in fishing for shrimp.

Sincerely yours,

PAUL G. DEMBLING,  
*For the Comptroller General of the United States.*

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U.S. DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
Washington, D.C., July 18, 1973.

HON. LEONOR K. SULLIVAN,  
*Chairman, Committee on Merchant Marine and Fisheries,*  
*House of Representatives,*  
*Washington, D.C.*

DEAR MADAM CHAIRMAN: By letter of June 12, 1973, you requested the views of this Department on H.R. 8529, a bill "To implement the shrimp fishing agreement with Brazil."

Because this legislation pertains primarily to commercial fisheries and because the Federal responsibility therefor has been transferred to the Department of Commerce pursuant to Reorganization Plan No. 4 of 1970, this Department has no special interest in H.R. 8529. Accordingly, we will not plan to make comment unless, in light of the foregoing, your Committee requests us to do so.

Sincerely yours,

JOHN KYL,  
*Assistant Secretary of the Interior.*

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DEPARTMENT OF JUSTICE,  
Washington, D.C., August 6, 1973.

HON. LEONOR K. SULLIVAN,  
*Chairman, Committee on Merchant Marine and Fisheries,*  
*House of Representatives,*  
*Washington, D.C.*

DEAR MADAM CHAIRMAN: This is in response to your request for the views of the Department of Justice on H.R. 8529, a bill "To implement the shrimp fishing agreement with Brazil."

The draft bill would enact new laws implementing the shrimp fishing agreement signed in Brazilia on May 9, 1972. There is no existing law by which the United States may limit its citizens' entry into high seas fisheries. This bill would be the first such law, applying to a relatively small area of the Atlantic Ocean off the northernmost portion of Brazil's coast north of the Amazon Delta.

This Agreement area encompasses practically all the major traditional United States shrimping grounds off the coast of Brazil, which the United States regards as high seas but which the government of Brazil regards as within her 200-mile belt of territorial waters.

Section 2 of the bill defines the Agreement area, the shrimp species protected, the persons and property subject to the law and its penalties, and an apparently complete assortment of other terms. Sections 3 and 4 provide for a limited number (325) of annual permits costing \$615 each plus up to \$100 or more to cover administrative costs. These permit fees are designed to cover the cost of carrying out the Agreement. Permits are issued on certain terms and subject to refusal or revocation after hearing by a final and binding decision of the Secretary of Commerce.

Section 5 provides for fishermen making voluntary prepayment of permit fees. Section 6 provides for an Offshore Shrimp Fisheries Fund composed of permit fees, appropriated funds, minimum penalties imposed, and miscellaneous income, out of which the United States would pay enforcement expenses provided for by the treaty. Section 7 requires shrimpers to keep a log of operations and to make certain reports to the Secretary of Commerce, who in turn is given subpoena power enforceable by the district courts. Section 8 forbids unpermitted shrimping in the Agreement area, transshipment of shrimp to an unlicensed vessel within the area, assaulting a boarding officer, shrimping by more than 160 vessels within the area, fishing in contravention of treaty Annex II, and failing to keep, or falsifying, logbooks.

Section 9 authorizes the Secretary of Commerce to assess a civil penalty for violation of Section 8 in an amount at least enough to cover the unusual enforcement expenses occasioned by the violation, but not to exceed \$10,000, or \$3,000 for logbook and miscellaneous violations. The Secretary may compromise any such penalty assessed by him, subject to the minimum. The Secretary may assess a second civil penalty equal to the value of the catch and the gear involved in the catching, for unpermitted fishing within the Agreement area, or for any second offense. If these penalties are not paid within 30 days, the Secretary may then refer the assessment to the Attorney General for collection. The remaining sections 10 through 13 have to do with enforcement, promulgation of regulations, appropriations, and severability.

Whether this legislation should be enacted involves questions as to which the Department of Justice defers to the Departments of Transportation, Commerce, and State.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Cordially,

MIKE McKEVITT.

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OFFICE OF THE SECRETARY OF TRANSPORTATION,  
Washington, D.C., July 19, 1973.

HON. LEONOR K. SULLIVAN,  
*Chairman, Committee on Merchant Marine and Fisheries,  
House of Representatives,  
Washington, D.C.*

DEAR MADAM CHAIRMAN: This is in response to your request for the views of the Department of Transportation on H.R. 8529, a bill "To implement the shrimp fishing agreement with Brazil."

The bill would implement the Agreement Between the Government of the Federative Republic of Brazil and the Government of the United States of America Concerning Shrimp signed at Brasilia on May 9, 1972 to which the Senate gave its advice and consent to ratification on November 29, 1972.

The Agreement is an interim accommodation between the United States and Brazil concerning the shrimp fishing activities of vessels owned by citizens of the United States within the 200 mile zone claimed by Brazil as its territorial sea in 1970. It provides for limited entry into the shrimp fisheries covered by the Agreement while preserving the parties' respective legal positions pending a general agreement of nations as to the extent of a coastal state's jurisdiction over fisheries resources. The proposed legislation would implement the Agreement by establishing a permit scheme to be administered by the Secretary of Commerce. A system of enforcement and penalty assessment is



provided, along with the establishment of a special revolving fund, the Off-shore Shrimp Fishery Fund, to handle permit fees and costs of enforcement.

The Department of Transportation recognizes that the Agreement, and the implementing legislation, respond to a need of United States fishermen who have historically fished for shrimp in the high seas off the coast of Brazil. Accordingly, subject to the following comments, we have no objection to the enactment of the bill H.R. 8529.

Section 10(a) of the bill states that its provisions are to be enforced jointly by the Secretary of Commerce, the Secretary of the Treasury and the Secretary of the department in which the Coast Guard is operating. The Agreement provides for any at-sea enforcement to be accomplished by Brazilian authorities. The United States will conduct any shoreside enforcement activities and will administer the permit issuing scheme. Thus, no Coast Guard at-sea enforcement activity will be required as a result of implementing the Agreement. Section 10(b), however, provides for Brazilian authorities to deliver a United States flag vessel found in violation of the Agreement to an agent of the United States. We assume that, in a proper case, the Coast Guard might be the agent of the United States called upon to receive such a vessel.

We note that the bill establishes a scheme which effectively encourages compliance before enactment and imposes restrictions on those fishermen who do not comply before that date. While we have reservations as to the legality and appropriateness of these provisions, we defer to the comments of the Department of Justice on these matters.

Additionally, we note that the bill does not address the matters of flag vessels of third parties landing shrimp taken off the coast of Brazil. We assume that the landing prohibition of 46 U.S.C. 251(a) is intended to operate in this situation. Also, the bill, by its terms, applies only to vessels documented under the laws of the United States. Vessels under 5 tons would, therefore, not be subject to its limitations or enforcement provisions. This omission, however, does not appear to create a practical problem as vessels of such limited size are not likely to be used in the shrimp fisheries covered by this proposal.

Finally, in section 11 of the bill (page 16, line 24), it is apparent that the word "marketing" should be submitted for the word "marketing".

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of this report to the Committee.

Sincerely,

J. THOMAS TIDD,  
*Acting General Counsel.*

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THE GENERAL COUNSEL OF THE TREASURY,  
*Washington, D.C., July 17, 1973.*

HON. LEONOR K. SULLIVAN,  
*Chairman, Committee on Merchant Marine and Fisheries,  
House of Representatives,  
Washington, D.C.*

DEAR MADAM CHAIRMAN: Reference is made to your request for the views of this Department on H.R. 8529, "To implement the shrimp fishing agreement with Brazil."

The proposed legislation would implement the "Agreement Between the Government of the Federative Republic of Brazil and the Government of the United States of America Concerning Shrimp", signed on May 9, 1972. Specifically, the bill would provide for the licensing by the Secretary of Commerce of United States vessels to fish within the area covered by the Agreement.

Sections 6 and 10 of the bill are of interest to the Department.

Subsection (a) of section 6 would establish in the Treasury a separate fund, the Offshore Shrimp Fisheries Fund consisting of license fees, appropriated funds, transfers from other accounts, and amounts collected as penalties. The fund would be available for the payment of enforcement expenses as provided in Article VI of the Treaty. We have no objection to this section.

Section 10 would vest enforcement responsibilities jointly in the Department of Commerce, the Department in which the Coast Guard is operating and this Department. We anticipate no administrative difficulties in carrying out any enforcement responsibility which may be assigned to the Department.

In view of the above, the Department would have no objection to the enactment of H.R. 8529.

The Department has been advised by the Office of Management and Budget that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee.

Sincerely yours,

EDWARD F. SCHMULTS,  
*General Counsel.*

Mr. DINGELL. The Chair has a list of witnesses who will be appearing, pursuant to the legislation in question.

The Chair does note the Chairman of the full committee has expressed particular interest in this legislation, and will present the subcommittee with a statement.

#### STATEMENT OF HON. LEONOR K. SULLIVAN, REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI

Mrs. SULLIVAN. Thank you, Mr. Chairman. I would like to make just a few brief remarks on H.R. 8529, which I introduced, along with six other members of the committee, as a result of an executive communication from the Department of State.

As I am sure all here today are aware, the country of Brazil, like so many of her sister nations, claims a 200 mile exclusive fisheries zone off its coastal waters. For a number of years, American shrimp fishermen have been taking shrimp from the waters off the coast of Brazil, some of which has been taken from areas within their 200 mile exclusive fisheries zone.

The U.S. Government recognizes only a 12-mile exclusive fisheries zone, and in an effort to forestall any problems which might arise because of the difference in the views of the United States and Brazil concerning fisheries jurisdiction, on May 9, 1972, the two governments entered into an agreement which provided for the licensing by the Secretary of Commerce of a number of U.S. vessels for fishing within a regulatory area off the coast of Brazil.

The Senate gave its consent and ratification to the agreement on October 3, 1972, and the President signed the instrument of ratification on November 29. The agreement will be in effect for 2 years, terminating on January 1, 1974, unless extended by mutual consent of the two contracting governments.

In view of the early termination date of this agreement, I received a number of requests from representatives of the Department of State and the National Shrimp Association urging early consideration of the agreement's implementing legislation, H.R. 8529.

It was these requests that prompted me to ask the subcommittee to arrange early hearings on the bill and I would like to take this opportunity to thank John Dingell, chairman of the subcommittee for arranging to work these hearings in what I know to be an extremely busy schedule for him.

Thank you, Mr. Chairman, for recognizing me and allowing me to make these few comments.

Mr. DINGELL. Thank you, Madam Chairman.

The Chair notes our first witness is Mr. Stuart Blow, Assistant Coordinator of Ocean Affairs, appearing on behalf of the Department of State.

Mr. Blow, the Chair is pleased to welcome you.

**STATEMENT OF STUART BLOW, ACTING COORDINATOR OF OCEAN AFFAIRS, DEPARTMENT OF STATE, ACCOMPANIED BY WILVAN G. VAN CAMPEN, OFFICE OF THE COORDINATOR OF OCEAN AFFAIRS; AND CHARLES J. PITMAN, OFFICE OF THE LEGAL ADVISER, DEPARTMENT OF STATE**

Mr. BLOW. With me is Mr. Wilvan G. Van Campen of the same office as I.

Mr. DINGELL. We are pleased to have you here.

Mr. BLOW. And Mr. Charles Pitman, of the Office of the Legal Adviser of the Department of State.

With your permission, I would like to have these gentlemen join me at the table.

Mr. DINGELL. If you will take your places at the committee table.

The Chair will recognize you for such statements that you may wish to give.

Mr. BLOW. Mr. Chairman, my name is Stuart Blow. I am Acting Coordinator of Ocean Affairs, Department of State.

I have a prepared statement, copies of which have been submitted to the committee, and I can either read the statement or submit it for the record, and submit to questions as you wish, sir.

Mr. DINGELL. I think it would be quite appropriate, Mr. Blow, if we insert your full statement in the record, and it will appear there as if given, and we will recognize you for any summary that you choose to give.

Mr. BLOW. Thank you, Mr. Chairman.

[The statement referred to follows:]

**STATEMENT OF STUART BLOW, ACTING COORDINATOR OF OCEAN AFFAIRS, DEPARTMENT OF STATE**

Mr. Chairman and members of the committee, thank you for this opportunity to come before your Committee to speak in support of H.R. 8529, a bill to implement the shrimp fishing agreement with Brazil.

Enactment into law of H.R. 8529 would enable the United States to fulfill the obligations which it has undertaken in the treaty with Brazil which was signed at Brasilia on May 9, 1972, and ratified by the President, as advised by the Senate, on November 29, 1972. Specifically, it would provide the legal authority for the United States to issue permits to a limited number of United States vessels to fish for shrimp in a defined area on the high seas off the coast of northeastern Brazil, to set the conditions for operating under such permits, to penalize violations of these conditions, and to reimburse the Government of Brazil for its services in enforcing the treaty.

The purpose of the shrimp agreement with Brazil is to ensure the conservation and orderly exploitation of important shrimp resources lying off the Brazilian coast, without prejudice to the conflicting positions of the two Governments as to the juridical status of the area in which those resources occur. Despite the potential jurisdictional dispute, it was possible to find a basis for agreement by reconciling the practical interests of the two parties. For the United States, the principal concern was to ensure that American fishermen would continue to have the opportunity of peaceful access to a major fishery which they had pioneered and developed over more than a decade. For Brazil, the major concern appears to have been to ensure that resources of great potential importance to the developing Brazilian fishing industry would be preserved from overexploitation. These concerns were accommodated by an appropriate control on the number of vessels in the fishery, certain restrictions of fishing season, fishing area and fishing methods, and an undertaking to gather and exchange data on fishing effort and catches and the results of analysis of those data. It was agreed that Brazil would bear responsibility for



enforcing the agreement, for reasons of convenience and economy in view of the great distance of the area from the United States, and that the United States would try and punish United States violators of the agreement. The success of the agreement in meeting the concerns of the United States is well attested, I believe, by the fact that since it was signed the United States shrimp fleet has continued its normal operations on the basis of voluntary compliance with the terms of the agreement. There have been only a few instances where the Brazilian authorities considered that enforcement action was required, although the Brazilian Navy has been diligent in carrying out its responsibility for surveillance.

Taking the major provisions of the proposed legislation in the order in which they are presented in H.R. 8529, the Secretary of Commerce would be authorized to issue annual permits for up to 325 United States vessels to fish for shrimp in the area of the agreement. These permits would be subject to appropriate conditions necessary for compliance with the terms of the agreement and could be revoked or suspended for failure to comply. Fees for the permits would be prescribed, based on the principle of recovering the payment due Brazil for enforcement services, if the full 325 vessels take permits. Procedures for issuing permits would be defined, to ensure a fair opportunity for all vessel owners desiring a permit to apply for one. Provisions would be made for due recognition of vessel owners who have voluntarily complied with the agreement prior to the enactment of implementing legislation.

A fund, called the Offshore Shrimp Fisheries Fund, would be established in the Treasury, from which the enforcement expenses provided for in the treaty would be paid by the United States to Brazil. The fund would be financed to the extent possible by the permit fees paid by vessel owners, supplemented to the extent necessary by the appropriations authorized in H.R. 8529.

Fishermen operating under permits would be obliged to keep and furnish records of their fishing operations according to a prescribed form, in order to enable the United States to fulfill its obligations relating to data exchange under the terms of the treaty.

Section 8 of the bill details activities which would be prohibited to operators of United States vessels in the area covered by the treaty. Such activities are separated into two groups, the first being those related to specific provisions of the treaty dealing with the actual conduct of fishing operations, and the second relating to the requirement to furnish information and other less important provisions. The following section provides penalties for violation of these prohibitions, more severe for the first group and lighter for the second, and outlines the procedures for the application of penalties.

The section of H.R. 8529 dealing with enforcement is brief, its main purpose being to establish that, as provided in the treaty, duly authorized law enforcement officers of Brazil may act on behalf of the United States in enforcing the treaty to the limited extent of boarding and searching United States vessels in the treaty area and detaining them if necessary, such detention to be only for the purpose of delivering the vessel as soon as practicable to an agent of the United States Government.

In conclusion, the bill provides for general authority for the Secretary of Commerce to issue all regulations necessary for implementing the treaty and the other provisions of the bill. It also provides for authorization of such appropriations as may be required to supplement the contributions of vessel owners, through permit fees, to the fund for payment of enforcement expenses and for the cost to the United States Government of administering and enforcing the treaty, the proposed law and the implementing regulations.

Mr. Chairman, the provisions of H.R. 8529, like the treaty which it is designed to implement, have already been tested in practice to a considerable extent through the excellent voluntary compliance of our fishing industry over a period of more than a year. The number of vessels in the fishery is being controlled as provided in the treaty, vessel owners are registering with the Department of Commerce and information on their vessels is being furnished to the Brazilian Government. As further provided in the treaty, the vessels are showing the agreed identification signs, the fishermen are observing the closed season and keeping the prescribed records of their operations, and the Brazilian Navy is carrying out its duties of reconnaissance and surveillance. The vessel owners are even maintaining in special bank accounts sums of money equivalent to the proposed permit fees. The system which it is proposed to establish under the provisions of H.R. 8529 is already working to the general

satisfaction of the United States Government, the shrimp fishing industry and the Government of Brazil in most respects. However, to ensure the full and uninterrupted operation of the system, and thereby the complete fulfillment of our treaty obligations to Brazil, legal authority is required to make compliance obligatory, to punish violators, and to reimburse Brazil for enforcement services.

The shrimp treaty with Brazil will expire at the end of this year, unless an extension can be negotiated. The Department of State believes that it is in the interest of the United States to have the agreement extended, and we believe that the other Departments concerned share this view. Our information is that the consensus of the shrimp industry sectors directly affected by the agreement is also in favor of our seeking an extension. The Government of Brazil is aware that without Congressional action of the kind contemplated in the submission of H.R. 8529 the United States cannot enforce the provisions of the shrimp treaty against its fishermen nor pay Brazil the money due her under the terms of the treaty. The Government of Brazil has been quite patient during the time that it has taken us to develop and present the proposed legislation to the Congress for consideration, but we will not be in a very good posture to approach the Government of Brazil concerning the negotiation of an extension of the treaty until H.R. 8529 or another bill to accomplish the same purposes is enacted into law. The time remaining to us under the present treaty is already short. We hope, therefore, that your Committee will find it possible to report H.R. 8529 favorably and recommend it for early action by the House.

Thank you, Mr. Chairman. I will be happy to answer any questions that you and the Members of the Committee may have.

Mr. BLOW. I appear this morning, and thank you for this opportunity to do so, to speak in support of H.R. 8529, a bill to implement the shrimp fishing agreement with Brazil.

The agreement with Brazil was signed on May 9, 1972. It was in effect an accommodation of the interests of the two countries having regard to the fact that the juridical positions of the two countries were different as to an area in which our fishermen had pioneered shrimp fishing some 10 years before.

We were successful in accommodating these interests, and reached an agreement which we believe is in the interest of the United States.

Our present concern is that such legislation as H.R. 8529 be enacted in order that we may carry out our obligations to Brazil under the agreement and in order that we may be in a position to extend this agreement when it expires, as it now will at the end of this year.

Without some such legislation we would be in a very poor position to approach Brazil for an extension of the agreement.

Mr. Chairman, that is a brief summary of our concerns, and I would be glad to answer any questions you may have, sir.

Mr. DINGELL. We thank you for your very helpful testimony.

The Chair recognizes Mr. Studds.

Mr. STUDDS. Thank you. I have not had time to read your whole statement.

I have a number of questions that must be obvious to you. I again find myself in the position of wondering why the Department of State, and the government in general, at least the executive branch, seems more anxious to accommodate the interests of other nations than those of our own.

As I skim the provisions of the agreement with Brazil, it sounds remarkably like that set of recommendations which many of us

have been making for a long time for our Nation with regard to foreign vessels within 200 miles of our shores, as you know.

The Department of State and other agencies of the executive branch have consistently told us that any such arrangements for U.S. jurisdiction within 200 miles of our shores are absolutely out of the question. It constituted unilateral action.

Therefore, we are told by the executive branch that we cannot consider it. Now here we are, in broad general substance at least, accommodating the contention of another nation, in this case, Brazil, that they have precisely that right.

Why are we prepared to do that for another nation, and not our own?

Mr. BLOW. Sir, we do not recognize that we have the right. We do not recognize Brazil's territorial—

Mr. STUBBS. I understand that, and neither has anyone suggested that we extend our territorial waters, either.

Mr. BLOW. But we have had the option of a confrontation with Brazil on this issue. We could have our fishermen go down there and fish in the waters off Brazil, over which Brazil claims jurisdiction. They could take their chances with Brazil's enforcement.

We would, of course, do what we could through diplomatic actions to protect them, but as you know, in other cases this protection has not been complete. We would have faced the problem of possible seizures, and while the vessel owners would be reimbursed for the fines, they would still incur a loss because of the loss of fishing time and other elements in connection with it.

Mr. STUBBS. Am I to understand you to say that because the nation of Brazil asserted for itself the authority to exercise fishing jurisdiction, and therefore threatened a confrontation with the United States, that we should not take issue with that assertion? That the big U.S. position was that we must not have a confrontation, and therefore we will accommodate the nation of Brazil?

Mr. BLOW. I do not think it was a desire to avoid a confrontation.

Mr. STUBBS. Those were your words, and not mine.

Mr. BLOW. Well, our purpose was to enable our fishermen to have access to fishery which they themselves have developed. If we had simply confronted Brazil to say that we do not agree with your position, we will not have anything to do with it, and our fishermen will continue to fish, there would have been the probability that some of our vessels would be taken.

Mr. STUBBS. In other words, the other nations of the world, of which Brazil is clearly one, are quite prepared to act strongly and affirmatively on behalf of their interests? And in the case of our own fishermen, the United States does not seem to be quite so prepared?

Why do we not say to other fishermen fishing within 200 miles of our shores, this is our position; now, are you going to risk a confrontation?

Mr. BLOW. Because, sir, we do not consider this to be in accordance with international law.

Mr. STUBBS. Then why are we entering into this agreement?

Mr. BLOW. This is a practical agreement. Brazil is interested in the resources, and we are interested in our fishermen's access.



Mr. STUDDS. Are you saying to this committee that you are recommending to us implementing legislation that you do not believe to be in accordance with international law?

Mr. BLOW. It is not a question of whether the legislation is in accordance with international law. We are faced with a practical situation.

Mr. STUDDS. And in this practical situation, the Department of State is prepared to recommend to this Congress that it pass implementing legislation, to implement an agreement which is illegal, according to your interpretation of international law, is that what you are saying?

Mr. BLOW. May I ask Mr. Pitman to address himself to this question?

Mr. STUDDS. Yes.

Mr. PITMAN. I think if you look carefully at the agreement, you will find that it rather strongly preserves our position under international law, that the territorial sea may not exceed 3 miles and fisheries jurisdiction may not extend beyond 12 miles. We worked very long and hard—in fact it was a condition of our entering an agreement—to obtain a provision that protected our juridical position vis-a-vis Brazil's 200 mile claim.

I think we are satisfied that this agreement is in accord with our view of international law, and adequately protects our juridical position.

Now, the question of whether the implementing legislation is justified, and can be sustained, is really a separate one.

Let me say that this negotiation was not something that we went into lightly.

Mr. STUDDS. I am sure of that.

Mr. PITMAN. We did have to make sure that we had a position that protected our juridical and negotiating position with respect to international law and with respect to the negotiations underway in the United Nations, and we think we obtained our objective.

Mr. STUDDS. Again, if I understand what you are saying, you are saying that what the United States did was to make it perfectly clear that the Brazilian contention does not meet with the concurrence of the United States, that we do not believe that they have the right of fisheries jurisdiction, and having made ourselves clear, we give in to that assertion.

Mr. PITMAN. As Mr. Blow pointed out, we were confronted with something of a dilemma, that of preserving the rights of our fishermen to fish on the one hand, and, on the other, of protecting our position under international law.

Mr. STUDDS. What you are saying is, as long as you agree with us that this is illegal, go ahead and do it, just so we will not get in an embarrassing situation.

Mr. PITMAN. I think from the Brazilian's point of view that they would not say what was done was illegal.

Mr. STUDDS. They claim it is not and we claim that it is.

Mr. PITMAN. We claim that the Brazilian action in unilaterally extending jurisdiction was illegal.

We believe that this treaty, which contains an accommodation of the two positions, is justifiable.

Mr. STUDDS. It is an interesting situation.

I cannot understand the position of the Department of State with respect to the suggestions that this Nation assert not its territorial jurisdiction, but its fisheries jurisdiction out to 200 miles from our shores.

Now, why are we so reluctant to take the same actions with fishermen from other nations, nations that we kow-tow to, when they act unilaterally?

Mr. BLOW. As we stated, Mr. Studds, we do not believe that a unilateral extension of jurisdiction is consistent with international law.

Mr. STUDDS. No, in substance, our position at the Law of the Sea Conference is to negotiate——

Mr. BLOW. No, our position as to the law of the sea conference, as far as the fishery articles are concerned, has to do with the control of exploitation, species by species.

Mr. STUDDS. I understand that, but in effect its affect is going to be the same, at least on the species on which we are concerned.

Mr. BLOW. Yes, but what we are proposing is an international agreement. Not a unilateral act.

Mr. STUDDS. Believe me, I have heard that.

But what I do not understand, let me give you an analogous situation.

Representatives of this Administration are coming before this committee with some regularity to tell us that we must enact legislation to authorize the United States to construct deepwater ports in the high seas off our coasts.

Now, the question of construction of the deepwater ports is on the agenda of the Law of the Sea Conference, is it not? I believe it is item 18.

Mr. BLOW. I am sure it is part of their discussions.

Mr. STUDDS. Here is a case where the Administration is saying to us, we must take interim unilateral action with respect to an item on the agenda of the Law of the Sea Conference.

Now, how in the world is that consistent with the position that you are giving us that we cannot do that with respect to fishing.

You can see why some of us here think it is a question of who has more power around here, whether it is oil, or the New England fishermen.

Now, how do you reconcile those two positions, how are they possibly consistent?

Mr. BLOW. Mr. Pitman, if you please.

Mr. PITMAN. I have been out of the ocean's business now for a few months, and I am not familiar with the legislation on deepwater ports, but I think that some of the considerations in connection with the legislation, went to the use of the high seas, and the possible application of the Continental Shelf doctrine.

Mr. STUDDS. Fishing does not strike you as reasonable use of the high seas?

Mr. PITMAN. It is a reasonable use, but the freedoms of the high seas, under the terms of the 1958 Convention itself, have to be exercised with reasonable regard with others exercising their freedoms.

Mr. STUDDS. Nobody is saying that we disregard the use of others. Brazil did not, either.

Mr. PITMAN. They did it in the context of an agreement which it is interim in nature, and recognizes the international negotiations in progress.

Mr. STUDDS. I introduced a bill that is interim in nature, and does recognize the Law of the Sea negotiations, and says that it is just interim until they are concluded, and the Administration says they are vehemently opposed to that bill.

Why is that?

Mr. PITMAN. I must say that I am not familiar with the specific reasons given.

Mr. STUDDS. The same reasons that you have given us here, we cannot act on an interim unilateral basis on a subject on the Law of the Sea agenda prior to that Conference.

And you come to us a week or two later and say, we have to act on an interim unilateral basis. It is important.

Now, how come oil is important and fishermen are not, that is what I want to know.

Mr. BLOW. I believe, sir, though I am not an expert in the field of international law, I think that there is some foundation for the construction of deepwater ports in existing international law.

Mr. STUDDS. No, sir, the Administration tells us we need this legislation in order to give them the legal right to do so.

Mr. BLOW. Well, I think what the Administration is asking is legislation from the Congress as a domestic measure which would enable the Government to carry out a right which it may conceive that it has under international law.

Mr. STUDDS. Do you remember the Outer Continental Shelf Lands Act? That I believe was a unilateral decree of the United States prior to any international agreement.

Mr. PITMAN. I think what you are referring to may be the Truman Proclamation of 1945, that was in fact really the opening bell in the development of the Continental Shelf doctrine, which later was reflected in the legislation you referred to.

Mr. STUDDS. And also that legislation occurred prior to the international agreement, did it not?

Mr. PITMAN. I am not certain. The international agreement was in 1958. I believe you are correct that it was in the middle 1950's.

Mr. STUDDS. Before it. We were prepared to act unilaterally then.

Mr. PITMAN. I think probably what was in people's minds at the time was that this—an emerging doctrine of international law—somehow justified us to act with respect to mineral resources on the Outer Continental Shelf of the United States.

At that time exploitation was just beginning.

Mr. STUDDS. The living resources, as well.

Mr. PITMAN. Certain living resources as well; yes.

Mr. STUDDS. And we cannot convince the administration that the lobster is one? I think we can detect some emerging law that you are supporting here, do you not?

Mr. PITMAN. I am sorry, I did not—

Mr. STUDDS. I think we are beginning to detect some emerging law in the agreement that you are asking us to support.



Mr. PITMAN. I am not sure that we can apply that standard to this agreement, since it is interim in nature by its very terms. There is international law emerging with respect to fisheries, and I think that law will probably be different after the Conference is over from what we have now.

I do not think it is accurate to characterize this particular agreement as evidence of emerging international law.

Mr. STUDDS. Let me ask you one other thing, if I may.

The Law of the Sea Conference, on its present schedule, will conclude roughly in mid-1975, as I understand it.

Given past experience with international agreements of this magnitude and importance, how many years roughly would you estimate it to be after the conclusion of the treaty for it to be ratified by the specific number of nations needed to come into full effect?

Mr. PITMAN. We have considered that issue in some detail, and I think it is frankly our conclusion that it would be a number of years.

Mr. STUDDS. How many?

Mr. PITMAN. Probably, and this is a rough guess, probably no less than 5 years.

Mr. STUDDS. No less than 5 years. So at the earliest, most optimistic, assuming, number one, that the Conference is on schedule, and assuming the best possible course of ratification, it will have the effect of international law in mid-1980?

Mr. PITMAN. You get into an area that really raises questions as to what international law is.

We will not, of course, have a treaty in force until it comes into force by its terms.

Whether the principles reflected in that treaty become international law before the requisite number of states become parties is a point that lawyers will argue about.

There is, of course, some thought being given to the possibility, at least with respect to the deep seabed, of establishing a provisional regime pending entry into force of a treaty.

Mr. STUDDS. I am aware of that, and we asked three times why similar authority is not given to the fisheries, and there has yet to be an answer from anyone from this administration.

You are concerned about the fellows who want to mine the deep seabed, and you have tabled in the U.N. Seabed Committee the provisions that you referred to, that those provisions come into effect immediately upon the signing of the treaty.

This is the fourth time that I have asked somebody from the administration, where is your similar proposal for the fisheries, and there has yet to be an answer, and again it seems to me that we have an indication of much more concern on behalf of major corporations in this country than we do for the independent fishermen.

I would like to say I do not understand that, but I am beginning to feel that I do, and I think it is a most unfortunate thing.

Do you anticipate proposing such a thing for the fishermen?

Mr. BLOW. Not to my knowledge, sir.

I think there is a difference here in the approach. When we are speaking of the deep seabed, we are talking about the seabed itself, not the water column above.

What we are concerned about, for one thing, is that an extension of jurisdiction in whatever manner over the water above, if you do it for fisheries, has certain implications for other vital interests of the United States, and that is why we can, I believe, and I am to a certain extent speculating, separate perhaps the seabed from the water column above in terms of some of our major interests.

Mr. STUDDS. It is quite clear which are the real interests of the United States, at least in the eyes of this administration.

I apologize for taking so much time.

Let me just say that if we have to wait until 1980, or in all likelihood longer than that, if you look at the curves of the catch in New England, there will be no fish left, and they will have disappeared considerably before 1980, and I would appreciate some proposal by this administration of what you propose to do about that.

I am not interested in lawyers arguing about international law. I am interested in an entire industry which has a value of \$20 million a year in one city alone in my District, which has a history of several centuries behind it, and which is dying while lawyers argue about international law, and while other nations move to protect their own interests, and while we rationalize forever why we cannot protect ourselves.

I would like to know what proposals this administration has to see what we can do about it.

That is a serious question.

Mr. BLOW. I agree it is a serious question.

We are even now considering our position with regard to the International Commission for the Northwest Atlantic Fisheries. As to what our course may be with regard to that organization, I cannot see at this time.

Mr. STUDDS. I could suggest to you, as do the fishermen, as you know, that it has been totally useless. A simple look at the curve of the depleting fishery resources will tell you that.

I really am quite serious about that question. It is the third or fourth or fifth time that I, and other members of the committee, have asked it. And we have yet to see a proposal from this administration to preserve the fishing efforts of the United States, at least in the New England area, and once again I ask for such a proposal.

Thank you, Mr. Chairman.

Mr. DINGELL. Mr. Pritchard?

Mr. PRITCHARD. Thank you, Mr. Chairman.

Well, Mr. Studds said it more eloquently than I, and probably his problems are more serious than ours in the Pacific Northwest. Although far as halibut is concerned, the situation in the Pacific Northwest is equally as serious.

I would like to echo Mr. Studds' thoughts, that the treaty you have worked out with Brazil looks as if you are saying one thing and doing another, and that is a little hard for me to rationalize. I do not understand how you can rationalize that position.

I hope that people not only on this committee, but also Congress, will start putting pressure on you people in the State Department

to take some action. Because it seems as if we cannot get the fisheries problem high enough up on the list of priorities, and as a result we are being shortchanged. These fishery stocks are going to be depleted to the point that we will not be able to come back for a great many years.

What is going to happen if we get some action but too late? Our fishing stocks are going to be depleted. Our halibut will be gone.

Mr. DINGELL. Mr. Anderson?

Mr. ANDERSON. Thank you, Mr. Chairman.

I do not have any questions.

I want to commend our colleague, Mr. Studds, on his remarks, and wish to associate myself with his remarks. I feel he expressed our sentiments completely. I think we are all shocked by the serious circumstances affecting our fishing industries in all parts of the country. We hope to take a closer look at these situations and see what we can do to correct them.

Mr. BLOW. Mr. Chairman, I think I can assure you and the members of the committee that we do—we are aware in the State Department of the serious circumstances of some of our fisheries, that we are trying as hard as we can within what we conceive to be the confines of international law to solve these problems.

There is no lack of awareness on our part and no lack of desire to resolve the problems, but we do have some difficulties.

Mr. DINGELL. The Chair recognizes Mr. Everett, the counsel of the subcommittee.

Mr. EVERETT. Thank you, Mr. Chairman.

Mr. Blow, on pages 2 and 3 of the bill, there appears a definition of "vessel" and "vessel owner".

Do I assume the definition to refer only to American vessels documented under the laws of the United States?

Mr. BLOW. That is correct.

Mr. EVERETT. We are not talking about any Brazilian vessels here?

Mr. BLOW. No.

Mr. EVERETT. With respect to vessel ownership, it says more or less it means "any person, partnership, corporation, or association which is the owner of record of a vessel documented."

Now, my question to you is, do we need any further definition or elaboration on what constitutes ownership?

If a vessel is owned by a U.S. corporation, does 75 percent of the ownership have to be by U.S. citizens or corporations? Have you people given any consideration to this problem?

Mr. BLOW. Mr. Everett, we think that this is a technical question on which we would defer to the Coast Guard, being in charge of documentation of vessels.

Mr. EVERETT. The Coast Guard is not a witness here today.

Therefore I would like to ask you, if you would, since the State Department is the lead agency, to confer with the Coast Guard and find out if additional information is needed.

A definition of vessel appears in the 1916 Shipping Act, and I think that some of that language would probably be needed to be included in this legislation with respect to ownership of vessels.



Mr. BLOW. We will do that, Mr. Everett.  
[The information follows:]

*Question: What are the requirements for ownership by United States citizens for a vessel to fish under the terms of the United States-Brazil shrimp agreement?*

Answer: In order to be authorized to fish under the terms of the agreement, a vessel must be documented under the laws of the United States. In brief, those laws require that in order to be documented a vessel must be owned by a United States citizen. If owned by a partnership, all partners must be United States citizens. If owned by a corporation, it must be incorporated in a State of the United States, and the Chief executive officer, the chairman of the board and the majority of a quorum of the directors must be United States citizens. If a majority of the stock in the corporation is held by aliens, Maritime Administration approval must be obtained, but in any case the requirements cited in the preceding sentence apply. The requirement for 75 percent ownership of stock in the owning corporation by United States citizens, which was mentioned in discussion during the hearing, applies to vessels in the coastwise trade, not to fishing vessels.

Mr. EVERETT. On page 4 of the bill, lines 18 and 19, we authorize "the Secretary to transfer a permit to another vessels whether or not owned by the same vessel owner."

How does this provision relate to a leased vessel or one operated by one other than the owner?

Can you transfer a permit that is given to one of these vessel owners to someone else, such as the operator or lessee of another vessel?

Mr. BLOW. The permit goes with the vessel, Mr. Everett.

I think that the reason for this is that we had intended that the permits be as fully used as possible.

In other words, the permits not to go unused, so that if an owner had a permit that he was not going to use, it would be transferred with the consent of the Secretary.

Mr. EVERETT. In other words, if the vessel gets a permit, and he decides not to use it, then with the permission of the Secretary, he could transfer to another vessel, or does the Secretary reassign it to another vessel?

Mr. BLOW. I would assume that the regulations would require that such a transfer would be recorded and that the consent of the Secretary be made a matter of record.

Mr. EVERETT. I am still not sure of the intent of that language.

Mr. BLOW. We will be in touch with you about that.

[The following was received:]

*Question: Why does H.R. 8529 provide, in Sec. 3(b), that a vessel owner may, with the prior consent of the Secretary of Commerce, transfer a permit to another vessel whether or not owned by the same vessel owner? Would this apply when a vessel is leased or chartered?*

Answer: The purpose of this provision was to ensure that the total of number of permits available would be utilized to the maximum at all times. If the full 325 permits were issued, and there were additional vessels which were waiting to engage in the fishery, this provision would facilitate the rapid shift of a permit from a vessel which left the fishery to another which was entering, without the loss of time involved in a surrender and re-issue of the permit. The provision would apply to transfer of a permit to a vessel under lease or charter as long as it maintained its status as a documented vessel of the United States.

Mr. PITMAN. Mr. Everett, excuse me. Let me see if I understand what your concern is.

You are concerned that the owner who originally receives a permit might—your question is whether that person might, in fact, transfer the permit to the lessee of another vessel, is that it?

Mr. EVERETT. Yes.

Mr. PITMAN. I think the way it is written now, that that would be possible, with the Secretary's consent.

Mr. EVERETT. It is the intent of the legislation—

Mr. PITMAN. I think that what we were trying to achieve here was on the one hand, the possibility for owners to use permits for different vessels in their fleet and, in addition, as Mr. Blow mentioned, to maximize the use of permits generally.

While we may not have focused precisely on the question you raised, I think it would be possible under the terms of the bill, with the consent of the Secretary, to transfer permits to a lessee.

I cannot say that we thought of that and precisely intended it, but that would certainly be the effect of the bill.

Mr. EVERETT. How many vessels do you contemplate will fish in this area?

I notice the bill allows up to 325.

How many of them are participating in the Brazil fisheries?

Mr. BLOW. In the neighborhood of 200.

Mr. EVERETT. So that there are plenty of permits to go around?

Mr. BLOW. At this time, yes.

Mr. DINGELL. If you will yield, Mr. Everett.

Mr. EVERETT. Yes.

Mr. DINGELL. Can you inform me why the number 325 is selected?

Mr. BLOW. Sir, may I ask Mr. Van Campen, who was present at the negotiations, to speak to that?

Mr. DINGELL. Yes.

Mr. VAN CAMPEN. Mr. Chairman, at the time we went to negotiate with Brazil, the best information we could obtain from our fishing industry was that the peak number of American vessels engaged in this fishery had been about 400.

So, our goal was to obtain provisions under the agreement for 400 vessels.

The Brazilians came back with a calculation that they had made based on some biological data of the number of vessels that the resource could support profitably.

Mr. DINGELL. I am sorry—at that point, if you will yield.

The number of vessels is not important to the resources, its the volume of take.

Mr. VAN CAMPEN. Yes, sir. Their calculation was based on the average annual landings of a shrimp vessel, and from that to how many vessels could be operated profitably in the fishery.

The data was rather sketchy, as you might imagine. But they came out with a somewhat lesser number of vessels. And I should say that after that it was rather a matter of negotiating with us trying to get 400, and then trying not only to cut down the number but to reserve a larger part of that potential for themselves. And 325 came out rather arbitrarily.

Mr. DINGELL. Would you, as a kindness to this committee, make available calculations that the Brazilians made available to the State Department so that we can have a look at that?

Mr. VAN CAMPEN. Yes, sir.

Mr. DINGELL. Now, at the risk of transgressing on the time of counsel, there are points here that greatly trouble me.

You have, more or less, kept this subcommittee and this committee informally informed of agreements and negotiations of this kind. But I do not ever recall this committee receiving a formal communication from the State Department, either before or—during or after the shrimp agreement was executed.

But I note that you are always quite agreeable with legislation to implement.

Now, as Chairman of this subcommittee, this imposes upon me a certain unhappiness, because I find that I am expected to consider legislation awaiting upon the implementation agreement, which I have never been formally advised of.

And I must say, gentlemen, that I feel like a rubber stamp, and it has been my policy never to do that under any President—Kennedy, Eisenhower, Johnson or any other President.

What is your agency's policy with regard to agreements of this kind?

I would like your response to be in a formal statement, one that is carefully thought out and presented to this committee in writing after the conclusion of the hearings, with cautious and deliberate speed by your agency.

Now, if you will give me your comments.

Mr. BLOW. There was legislation last fall—in addition to our own policy—legislation was enacted last year which requires the Department to transmit to the Senate and to the House the text of agreements. And this is—

Mr. DINGELL. I have the agreements after it has been agreed to.

Now, give us implementing legislation. And if you don't, the Brazilians are not going to go forward. That makes me feel like a rubber stamp, and that makes me feel unhappy.

Mr. BLOW. At this time, sir, we cannot recall the consultations which may or may not have been held prior to the fact.

Mr. DINGELL. I am informed by Mr. Everett that the subcommittee was informally briefed, but I think we are going to have to follow some formal way for you people at the State Department of notifying us of these things in their incipient stages and work out a way where you might keep us formally apprised.

I am not satisfied. I am really not delighted with the legislation on this, and I notice a distinct unhappiness on the part of the members of the committee. This does not mean I am opposed to the bill, but it does mean that we are going to have to receive some kind of understanding that you folks at the State Department as to how matters are going to be handled in terms of seeing to it that this subcommittee and this committee, which is not infrequently called upon to consider implementing legislation, has some kind of implementation to go forward. And I want a full statement from you, Mr. Blow, on these points. And I really expect some formal understanding from the State Department on these matters.

Mr. BLOW. Would it be appropriate to consult with the staff of your committee and work out some specific arrangements on these matters?

Mr. DINGELL. I think that would be most helpful.



I do not want you to take these comments as critical. I have a high regard for you and I have always found you to be a good public servant and very capable individual.

But, you might as well know, I am unhappy so we might as well work together and solve these problems.

Mr. PITMAN. Let me make one brief comment about how my office works, the treaty section particularly.

Our treaty section is responsible for preparing letters of transmittal regarding international agreement that go first to the White House and then are sent to the Senate.

Mr. DINGELL. That takes care of the White House and Senate.

Now, how about the House of Representatives?

Mr. PITMAN. I am not aware of any formal procedure whereby Department officers consult on a regular basis with various committees that may be interested in particular agreements or necessary implementing legislation.

It has been my experience in the areas that I have worked with that this is done.

I just simply wanted to make clear what the formal procedure, as I know it is. I think your suggestion is a good one.

Mr. DINGELL. I think it would make your task easier, and it certainly would preclude getting ruffled up hair from time to time.

I think, Mr. Blow, your comments of working with the staff is helpful.

And now we will turn back to Mr. Everett.

Mr. EVERETT. On page 17 of the bill, reference is made to appropriations for enforcement expenses, both domestic and foreign.

Can you indicate at this time what the cost of this legislation would be to the Federal Government for the current fiscal year and the next 5 fiscal years if it is enacted into law?

Mr. BLOW. Well, the fees or permits were worked out on the assumption that there would be 325 vessels to be issued permits.

At the present time, there are about 200 vessels, as I said, operating in the fishery.

Now, the fees for those vessels annually, the fees for the vessels are \$615 plus an additional \$100 for administrative costs.

Now, if we multiply 200 by \$615, we get \$123,000, which leaves us \$77,000 of the obligation to Brazil unfunded.

Mr. EVERETT. But you also have a detention fee that someone has to pay in the amount \$100 per day for each vessel detained.

Who pays that?

Mr. BLOW. These funds come from the additional amounts that each permittee is required to pay for administrative expenses.

Mr. EVERETT. Well, if you will please supply that information for the record and if you would please break it down as to the different categories of the cost.

Mr. BLOW. We will do that, Mr. Everett.

Mr. EVERETT. Back on pages 10 and 11 of the bill, the Fisheries Enforcement Fund is mentioned.

Then, on page 10, section 6, it says the Secretary of Commerce makes the payment for enforcement expenses.

Then, in subsection (b), you say:

The Secretary of Commerce, through the Secretary of State, shall pay, or cause to be paid, on behalf of the United States, the enforcement expenses as provided in Article 6 of the treaty.

Why do you have two Secretaries making payments?

Does it not complicate the bookkeeping process, shall we say?

Mr. BLOW. Well, in section 6(a), Mr. Everett, I think this is merely a description of the purpose of the fund which is to be established.

Subsection (b) indicates the way in which the payments shall be made.

Mr. EVERETT. They will be made through the Secretary of State.

Mr. BLOW. That is right.

Mr. EVERETT. None of the payments go through the Secretary of Commerce?

Mr. BLOW. Well, of course, the—the vessel operator himself, the holders of permits, may, on occasion, have to pay these expenses out of pocket. This is—the payment of these enforcement funds is complicated here. It would be through the channel between governments. That is the only other section I can think of.

Mr. EVERETT. What I want to get clear is which Secretary actually makes the payments?

Does State make the payments?

Mr. BLOW. The payment would be made through the diplomatic channel.

Mr. EVERETT. With respect to the detention fee, I have the impression that if a vessel owner is detained for 2 or 3 days and he has to pay the \$100-per-day fee, and then later he is not convicted, is he entitled to reimbursement?

Mr. BLOW. He may apply for reimbursement.

Mr. EVERETT. Does the Brazilian Government keep that money or does the fund pay the money he is going to be reimbursed?

Mr. BLOW. They will keep it.

Mr. EVERETT. But the fund will have to reimburse him?

Mr. BLOW. May reimburse him.

Mr. EVERETT. If he is detained and not convicted later, then is he entitled to his money back?

Mr. BLOW. Yes.

There is another section, Mr. Everett, which—section 9(a)—which describes minimum penalties, but has a proviso that if the person against whom the penalty has been assessed has paid on behalf of the United States, the minimum penalty shall not apply.

Mr. EVERETT. All right.

Let us move on to section 10(b), page 16, of the legislation that authorizes the Government of Brazil to have law enforcement officers exercise responsibility under article 5 of the treaty to enforce provisions of the treaty against American fishing vessels.

They may board and search the vessel and, if the officers have reasonable cause to believe a provision of the treaty has been violated, then they can also seize and detain the vessel.

Is there any precedent in U.S. law that would allow foreign government personnel to seize an American fishing vessel?

Mr. BLOW. Yes, sir, indeed.

Mr. EVERETT. Which one?

Mr. BLOW. One that comes to mind immediately is the bilateral treaty between the United States and Canada on halibut.

The enforcement authorities of either country may board and search ships of the others.

Mr. DINGELL. That is the enforcement authorities of either country.

But we do not receive from the Brazilians in this agreement, as I read it, an understanding that the enforcement authorities from either country can board and seize each others' fishing vessels.

Mr. BLOW. I see the question was addressed to this particular aspect, is that right?

Mr. DINGELL. Yes, sir.

I am sure that we have in our other multilateral treaties authorization for the enforcement authorities of the respective countries to do this, but I am not sure that we submitted this type of agreement. And I think, in fairness, we ought to have a clear answer on that particular point.

Mr. BLOW. Yes, sir.

I did not understand the thrust of the question.

The reason for this is that we do not expect to have United States enforcement officers in the area. It would be a very costly operation to have a Coast Guard cutter—if indeed that would be adequate—to have one Coast Guard cutter maintain constant patrol.

Mr. DINGELL. I do not quarrel with that, but the problem that we have here is that this is a question of sovereignty of the United States and, within this committee, that is a rather delicate matter, as you might understand.

Mr. BLOW. Yes, sir, this is in that respect.

Mr. EVERETT. When boarding and seizing vessels, are they operating as agents or employees of the U.S. Government? Also, does this activity have an effect on the laws administered by the Civil Service Commission?

I am just wondering if you could comment on those aspects of the problems.

Have you all gone into these matters at all or raised these questions with the Department of Justice, the Coast Guard, or the Department of Commerce?

Mr. PITMAN. Mr. Everett, let me respond to that.

We did look at this provision very carefully. We had written a similar provision in the treaty to, first of all, avoid the need for us to enforce this agreement.

I do not think that we have really considered in detail, which I think you are trying to get at, the application of the civil service laws or regulations or tax laws, anything of that sort.

If you are interested, I think that this is something that we would be prepared to do. We realized, of course, all along that this was a novel provision in legislation.

Mr. DINGELL. Are you saying the legislation or the treaty?

Mr. PITMAN. In both respects actually, because the treaty, of course, unlike some of the others we have, does not provide for reciprocal provisions. The treaty provides a one-way kind of enforcement as does the legislation itself. But it certainly was not our intent to bring an officer of the Brazilian Government within the purview of some of our domestic laws that you referred to.

But it is novel, certainly.

Mr. DINGELL. I must say it would be my opinion that you probably did not intend to, but I am not sure of what the laws of the



United States would say with respect to Brazilian authorities enforcing U.S. statutes and treaties to which the United States is a party.

Mr. EVERETT. These vessels are all required to operate with American fishermen or American masters, are they not?

Mr. VAN CAMPEN. If I may speak to that question, Mr. Everett?

Mr. EVERETT. Yes, sir.

Mr. VAN CAMPEN. The vessels are required to be documented vessels of the United States, and that implies that they must be under the command of the U.S. citizen.

Mr. EVERETT. U.S. citizen?

Mr. VAN CAMPEN. Yes.

Mr. EVERETT. Now, is it correct that some of these vessels are being operated by foreign masters?

Have you heard anything to this effect?

Mr. VAN CAMPEN. I have heard from time to time this happens. The vessels are far from the United States, and we are not in a position—the Coast Guard is not in a position to keep an eye on this sort of thing at all times.

Mr. DINGELL. Does not the captain's laws require that vessels that fly the U.S. flag have U.S. masters and U.S. crews?

Mr. VAN CAMPEN. U.S. masters; they can hire a fisherman of any nationality and do.

Mr. EVERETT. I have heard through the grapevine, more or less, that some switching of masters has taken place, and I am just wondering if you are going to allow Brazilian Government officials to represent the U.S. Government in seizing American tuna vessels which are operated by foreign masters? I am wondering as to what kind of complications we are going to find ourselves.

Mr. VAN CAMPEN. As I understand from discussion of this question with experts in the Coast Guard, a vessel which is not under the command of a U.S. citizen is, of that moment and by that fact, not a documented vessel of the United States.

So, in fact, there cannot be a case where we let the Brazilians enforce on a U.S. vessel commanded by an alien because it would not be a U.S. vessel at that time.

Mr. EVERETT. Is there any prohibition spelled out in the bill relating to that problem in case it does take place?

Mr. VAN CAMPEN. No, only the stipulation that it must be a documented vessel by the United States.

Mr. EVERETT. You might take a look at that, Mr. Van Campen, and check with the Coast Guard to see if we need a provision in the bill to cover that situation.

I notice that Mr. J. B. Lynn of the Coast Guard, and Mr. Joseph Yglesias of the Coast Guard are in the room, and as the chairman said, we would like for you to consider these comments and provide responses for the record if you would.

[The response follows:]

#### U.S. CITIZENS AS MASTERS OF VESSELS

*Question: Should this legislation specify that vessels operating under permit have United States citizens as masters?*

*Answer:* The proposed legislation provides that vessels for which permits may be issued must be documented under the laws of the United States. One of

the requirements of the pertinent laws is that a documented vessel must have a United States citizen as master. There are numerous other and equally strict requirements for documentation, which are set forth in various laws and regulations. It does not seem particularly useful to repeat them all in this bill, since the simple requirement that the vessel be documented subsumes them all.

Mr. DINGELL. The Chair notes we have members of the committee here that may wish to ask questions.

Mr. McCloskey?

Mr. McCLOSKEY. I would like to follow up on the chairman's questions.

Briefly, the representative of the legal counsel, when you are negotiating a treaty that is going to require legislation for the U.S. obligations, are you under procedure to contact—

Mr. PITMAN. I am not certain that there is a formal procedure, Mr. McCloskey.

I know it is our normal practice, that is, our advice, as lawyers in the Department, that the office primarily responsible insure that the interested committees of Congress are advised of treaty negotiations that will later require a committee's action in the form of implementing legislation.

I believe there was, earlier in the negotiation of this treaty, some consultations with this committee.

It is a point that we often raise with our clients.

Mr. McCLOSKEY. I would like to know about the integrity of the U.S. position of entering into an agreement where you are, in effect, a representative, that you are going to do something different there.

Somewhere in that office it ought to be written.

The other question I have is why the delay in bringing the legislation to the House of Representatives?

Now, the treaty runs out in just a very few months, and here we seek legislation for the first time, July 1973.

Why is that?

Mr. BLOW. We acknowledge the delay in forwarding to the Congress this legislation. It did, however, present some new and unique problems, some of which have already been mentioned here.

Because of this, it did require some rather lengthy consultations between the various agencies concerned. And, unfortunately, this did take quite awhile.

Mr. DINGELL. Would the gentleman yield?

Mr. McCLOSKEY. Yes.

Mr. DINGELL. Just so that the record is clear on this point, the treaty was entered into in Brazil on May 9, 1972. It was transmitted to the Senate of the United States on July 28, 1972.

The Department of State submitted to the President on June 23, 1972. The bill was introduced on June 7, 1973.

I would assume that it was introduced rather expeditiously after it was submitted to the Congress. The ratification occurred in the Senate—wait a minute—the Senate gave its consent to ratification on October 3, 1972. The President signed the instrument of ratification November 29.

So it does not appear as if you folks in the State Department have gotten up the implementing legislation with any blinding speed.

Mr. BLOW. It is quite true, sir. It did take us quite awhile.

It was submitted to the Congress, the legislation that is, under date of May 24, 1973.

Mr. DINGELL. May 24, 1973.

It does appear that these things ought to come up a little more speedily.

Mr. BLOW. I agree, sir.

Mr. McCLOSKEY. I have no further questions.

Thank you.

Mr. DINGELL. The Chair notes Mr. Cohen is here.

Mr. COHEN. I regret that I was not here earlier.

I understand that Congressman Studds asked questions that I would have liked to pursue myself.

I can only share in many of the points that he made today, and I would also like to state that I have joined with a number of my colleagues on this committee in seeking to have the lobster, declared to be a creature of the shelf, and witnesses from the State Department have come before this committee and expressed their objection to this action, one, on the basis that a lobster has swimming appendices and therefore is a swimming creature, and could move 20 feet in water; secondly, that there would be a fear of retaliation on the part of other countries if we did so, despite the fact that Russia declared scallops to be a creature of the shelf and no retaliation has been taken by this or any other country.

Finally, we say we fear if we take action, there will be retaliation by other nations. And here is Brazil taking unilateral action, and we find ourselves in a treaty which implicitly recognizes their 200 mile limit and would ask the American taxpayer to help pay Brazil to supervise its waters.

Mr. BLOW. There may be other considerations, but the determination as to whether a particular creature qualifies under the Continental Shelf Convention of 1958 is a technical decision to be made by the experts.

They have to base that determination on certain criteria which are set out in the 1958 Convention.

Mr. COHEN. One of the points made before the committee was that the lobster has swimming appendages and, therefore, would not qualify.

And the second point made by the State Department was the fear of retaliation by other fishing nations, and it was brought out in the hearings that Russia had experienced no retaliation by this country or any other country.

Now, we see a situation where Brazil extends their territorial waters. I find that totally inconsistent with our position or theory of retaliation when we have greeted their unilateral action not with retaliation, but help them pay for the enforcement of it.

I find that inconsistent. I think the New England fisherman is going to find it inconsistent, because he has lost faith with his Government in protecting the needs of the coast.

We have the same situation in New England as we do on the west coast.

Mr. BLOW. I would think the argument as to retaliation would go to our action in, you might say, bending the provisions of the



treaty to our own wishes, not as to our action if we should put it on in conformity with the criteria.

Mr. COHEN. What you are suggesting is that because of the unilateral action taken by Brazil that we have, in fact, retaliated in the sense that we have bargained a tougher deal in this treaty?

Mr. BLOW. No. I am sorry.

What I was talking about is the fear of retaliation in the case that we should place lobster on the list of species of the Continental Shelf, not the Brazil action.

Mr. COHEN. But Brazil has taken unilateral action, correct?

Mr. BLOW. Yes.

Mr. COHEN. However, we responded by saying, yes, we recognize your interest in preserving the species on your coast, and we will pay \$200,000 for the enforcement of the treaty.

I think that is inconsistent with our treatment of New England fishing industries.

Mr. BLOW. As far as the lobster question is concerned, I believe we have commitments from most of the countries that are likely to take these lobsters.

Mr. COHEN. I do not want to make a big issue of the lobster being a creature of the shelf at this time.

I frankly have sponsored and will continue to urge 200 miles for the United States as well.

Mr. STUDDS. Will the gentleman yield?

Mr. COHEN. Yes.

Mr. STUDDS. I think Mr. Cohen is being fairly mild.

You referred to the United States bending. I would suggest that the only bending we do is backwards, to accommodate other nations in their interest. The State Department told us that the lobster was not a creature of the shelf; that it jumped up and down. The scallop does the same thing. The Soviets declared it to be a creature of the shelf.

I did not ask you whether the kangaroo was a creature of the earth or not.

I assume, by the same logic, that you would argue that of course it was not.

When you have to resort to arguments of that nature, something else is at stake other than technicalities, and I think, as suggested by Mr. Cohen, it is a lack of backbone in this Government in defending our own interests.

Mr. Cohen referred to the fact that not only are we recognizing Brazil's interest in their fisheries, not only are we giving them authority to seize our own vessels, but we are paying them to do it, as I understand.

We are reimbursing the Government of Brazil for its services in this treaty.

How solicitous can one get?

You say, in the end of your testimony:

The Government of Brazil is aware that without congressional action of the kind contemplated in the submission of H.R. 8529 the United States cannot enforce the provisions of the shrimp treaty against its fishermen, nor pay Brazil the money due her under the terms of the treaty.

The Government of Brazil has been quite patient, you say.

I submit that is an extraordinary statement to make.

Mr. BLOW. Not in terms of the fact that we entered into an agreement with them over a year ago.

Mr. STODDS. Who is Brazil being patient with, this committee, this House?

Mr. BLOW. With the fact that the United States has not met its obligations under the treaty.

Mr. STODDS. We are to be concerned that we pay them to seize our fishermen?

Mr. BLOW. In the view of the United States fishermen involved, they feel that it is in our interest.

Mr. STODDS. Thank you.

Mr. DINGELL. The Chair is going to recognize Mr. Anderson, but the Chair would like first to request that you submit to us a map of the oceanic waters concerned, for purposes of the record. We would like to be able to identify the areas that are involved off the coast of Brazil covered by the treaty.

Mr. BLOW. Yes, sir, we will do that.

[Map to be supplied follows:]

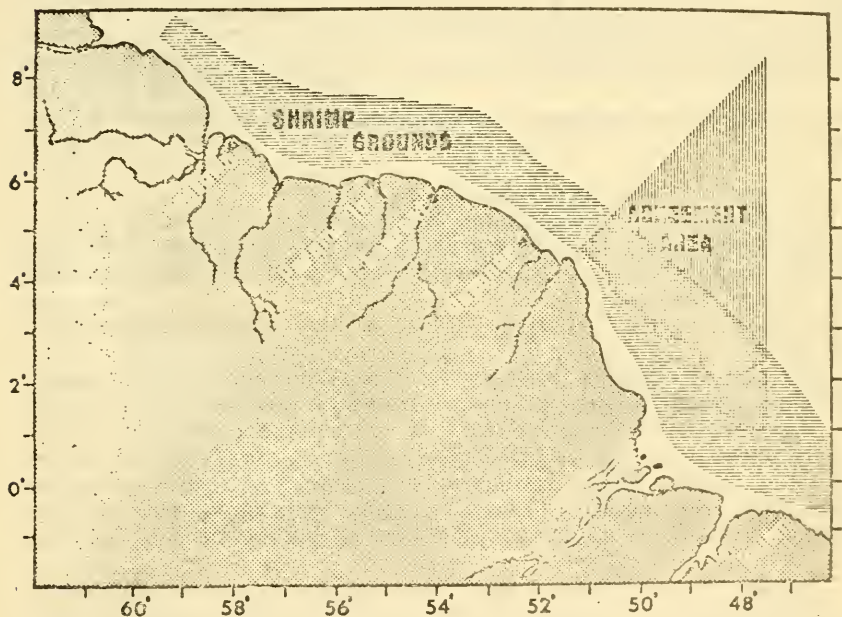


Fig. 1. The Guianas shrimp grounds off the northeastern coast of South America and the area of the U.S.-Brazil Shrimp Agreement. The Agreement area is bounded inshore by the 30-meter depth contour, offshore by the  $47^{\circ} 30'$  W longitude line, on the north by the northern border of Brazil and on the south by the  $1^{\circ}$  N latitude line. The principal ports of landing adjacent to the shrimp grounds are shown; not shown is one additional port of landing, Port-of-Spain, Trinidad.

[illegible]

Fig. 5. Logbook used for recording catch and effort information from the Guianas shrimp fishery.

Mr. DINGELL. Mr. Anderson.

Mr. ANDERSON. Mr. Chairman, thank you.

This U.S.-Brazil shrimp treaty applies to our shrimp fishermen off the coast of Brazil. It protects Brazil's interest in preserving her coastal fisheries.

My concern with this treaty is how it may affect my district in California.

Will this establish a precedent? for example, will this encourage the Government of Mexico to move toward a similar kind of treaty to preserve their fishing interests off the coast of Mexico?

Right now you are aware they are pushing pretty hard for the 200-mile limit. They have not enforced that limit yet, but they have been working toward it. They have urged and tried to enforce regulations affecting our fishermen fishing in the high seas off the coast of Mexico.

Various other techniques have been used to harass our fishermen.

My feeling would be that this Brazil shrimp treaty would be a sort of signal for the Government of Mexico to say: Now, Brazil got a good shrimp for their country, and we should get one for the tuna and other interests off the coast of Mexico.

Would you feel that this treaty would establish such a precedent?

Mr. Blow. Yes, Mr. Anderson, Mexico has been discussing, and, I understand, has espoused the concept of the patrimonial sea which has to do with jurisdiction over the resources out to X limits. I do not know, I doubt very much if this agreement with Brazil would impel them toward or dissuade them from proceeding.



Mr. ANDERSON. Is not Mexico doing this also in the name of preserving their coastal fisheries' interest, conservation and the like?

Mr. BLOW. Well, it is stated in terms of the conservation of the various resources within the zone that would be recognized under the concept.

However, Mexico has, as it appeared to us, been observant of the present concepts of international law. They have not taken any positive action. They have favored this, but it seems to us that they may be awaiting the outcome of the conference on the law of the sea. I do not know.

Mr. ANDERSON. Would this not tell them to demand a similar treaty to the one that Brazil has, and to do everything they can, to force a similar treaty out of us, again, in the name of preserving their fishing interests?

Mr. BLOW. Well, it is possible, but I cannot say that I think that it would.

Mr. ANDERSON. Our State Department—our representatives at the Law of the Sea Conference are supposedly fighting for the 3 and the 9 mile extension, total of 12 miles that we claim, and against the 200-mile sovereignty.

Would not this treaty undermine our efforts at the Law of the Sea Conference? I assume that all nations make their points in the name of conservation, of preserving their fishing interests, so that they do not get depleted.

So I assume that this is going to be the story in every case.

Mr. BLOW. Well, I do not think this could be called a capitulation to the Brazilian position.

We do preserve our juridical position.

In developing our position, which was tabled months ago, we have taken into account the increasing concern in this country and other countries for the protection and conservation of fishery resources.

We would prefer, and we think it is far more desirable, to do it by a species approach rather than a zone approach.

But I do not know that this particular action by Brazil, which took place in 1970—the fisheries decree having been issued in, I think, April 1971—

I do not think that this is any particular move to advance the concept of a specific zone.

Mr. ANDERSON. Would this not affect our people in negotiating the Law of the Sea Conference? Would this not, in a sense, forfeit our position?

Mr. BLOW. This agreement with Brazil, no, I do not think so.

Mr. ANDERSON. Does it not in effect recognize the legal limit out beyond 12 miles off the coast, even perhaps, out to 200 miles?

Mr. BLOW. No; I think, on the contrary, it might be helpful as an indication that countries can reach an accommodation on these matters without having to claim broad limits of jurisdiction.

Mr. ANDERSON. What you are suggesting then for our fishermen, who are going to be fishing off the coast of Mexico or Ecuador, is that in each case we will have to work out an individual treaty with each nation as to what our fishermen may do, and this fishing will be taking place on the high seas.

Mr. BLOW. We would hope not, and we would like to see some international standard in this respect. That is what we are fighting for.

Mr. ANDERSON. I have nothing further.

Mr. DINGELL. Mr. Sharood?

Mr. SHAROOD. Thank you, Mr. Chairman.

Mr. BLOW, have there been any violations of the treaty on the part of American fishermen, notwithstanding the fact that we do not have any implementing legislation at this time?

Mr. BLOW. There have been three cases where American vessels have been picked up by Brazilian enforcement personnel and taken into port.

Mr. SHAROOD. What was the disposition of those seizures by Brazil?

Mr. BLOW. In each case the vessels paid \$600 for special enforcement expenses as provided for.

Mr. SHAROOD. \$600?

Mr. BLOW. Yes.

Mr. SHAROOD. That was paid to the Brazilian Government, I assume?

Mr. BLOW. Yes.

Mr. SHAROOD. Now, what will happen to those vessels in terms of issuing them a permit pursuant to this pending legislation?

Mr. VAN CAMPEN. Mr. Sharood, in these three cases, the vessels all have been issued permits. When we began working under this voluntary compliance program, it took us a while to work out a smooth and expeditious communication to Brazil of the names, identification numbers, and so forth, of these vessels; and at the time that these vessels were picked up, the Brazilian navy patrols did not have them on their list of vessels that we had authorized to fish.

In one case the vessel was in violation of the agreed terms in a couple of respects—it was not showing the agreed identification signboard, and it was not keeping the agreed fishing log book.

So that we might consider that if we had a law, that the vessel would have been in violation, in those two respects.

The problem with the other two was that the Brazilians had not received word that these vessels were on the authorized list, so that we consider that it was a mistake, the vessels are entitled to their permits and entitled to go on fishing in good standing under the agreement.

Mr. SHAROOD. Have there been any other American vessels fishing for shrimp off of Brazil in this area under the agreement, without participating in this voluntary program, pending the enactment of this legislation?

Mr. VAN CAMPEN. In spite of the fact that the Brazilian Navy is apparently carrying on quite active surveillance, we have not had any such brought to our attention.

Mr. SHAROOD. So the fishermen are all cooperating in the implementation of this treaty, is that a fair statement?

Mr. BLOW. It does appear that they are complying voluntarily to a very great extent.

Mr. SHAROOD. What is the purpose of the money that is to be paid to Brazil; is it all for enforcement, or is any portion for research

in regard to the stocks of shrimp? What is the nature of the agreement?

Mr. BLOW. The agreement specifies that it is for enforcement expenses.

Mr. SHAROOD. So we are participating in any way, then, in terms of research on the yields of the shrimp stocks off Brazil, or doing anything to further our knowledge of those stocks?

Mr. VAN CAMPEN. Indeed, we are, sir.

Not through the contribution of money to Brazil for that purpose, but because of this provision in the agreement that the vessels are to keep detailed logbooks, our National Marine Fisheries Service is acquiring much better and more complete data on the shrimp in that area than it has had before, and it is analyzing this and is on the way to producing some very good information which, under the agreement, we will exchange with Brazil.

Mr. SHAROOD. Are we in turn getting any information from Brazil?

Mr. VAN CAMPEN. To date, as far as I know, we have not. I really do not know how much research they are doing.

They have told our scientists that they intend to do research, that they are setting up a laboratory, but I do not know, to any extent, what is going on.

I might say indirectly that the agreement, while the payment is clearly for enforcement, could benefit fishery development in Brazil, because I understand that as a matter of internal arrangements within the Brazilian Government, if and when this money is received, it will be turned over to the Brazilian Government Fishery Development Agency for its use.

Mr. SHAROOD. I get the impression from what you say that the United States is really doing all of the research and data gathering that is being done in regard to the Brazilian shrimp resources, and we are then in turn to provide all that data to Brazil to increase their knowledge of their own resource; is that a fair statement?

How much do you know, if any, research is being done in Brazil on their shrimp stocks?

Mr. VAN CAMPEN. I know they are doing some, but I do not believe it is comparable with the efforts that we are making.

Mr. SHAROOD. Now, insofar as enforcement of the agreement is concerned, does this agreement provide for Brazilian authorities to go below and investigate the catch on board an American vessel, ascertain what they have on the ship and so forth?

Do they have free run of the vessel when they go on board?

Mr. VAN CAMPEN. Well, sir, a shrimp vessel is not a very large craft, and once aboard—

Mr. SHAROOD. I realize that. Just yes or no.

Can they go below and do whatever is necessary to verify what it has on board? How many tons, et cetera, et cetera?

Mr. VAN CAMPEN. Yes, sir; I know of no limitations set on how they may carry out their inspection activity. As far as I know, in the cases to date, it has been mainly by inspection of the log rather than looking into the fish holds.

Mr. SHAROOD. What kind of vessels do they use for the enforcement?



Mr. VAN CAMPEN. Well, they have used aircraft, of course. The vessels have been usually described as Corvettes or frigates. In other words, small.

Mr. SHAROOD. They are naval vessels?

Mr. VAN CAMPEN. Yes, indeed; definitely.

Mr. SHAROOD. Are any of the agreements that we have entered into with other countries, fishing off our coast, comparable or analogous to the Brazilian agreement? Do they authorize Americans to go on board, inspect the records, have free run of the vessel; and if they find a violation, to seize it and bring it to a U.S. port to be turned over to their authorities?

Particularly with the Soviet Union, Poland, East Germany, and Japan.

Mr. BLOW. Yes, there are enforcement provisions.

Mr. SHAROOD. I did not ask you that. I asked you if they allow for the United States to do all those things that we allow Brazil to do?

Mr. BLOW. In a one-sided way.

Mr. SHAROOD. One-sided or both ways, can the United States do any of these things with regard to—

Mr. BLOW. Yes.

Mr. SHAROOD. Would you please specify?

Mr. BLOW. The International Commission for the Northwest Atlantic Fisheries. There are observation arrangements with the United States.

Mr. SHAROOD. Observation is one thing. Actually going on board and seizing the vessel in violation and bringing it into American ports?

Mr. BLOW. Yes. All right. The North Pacific Fisheries Convention provides that they may detain and bring into port Japanese vessels or Canadian vessels for violation of the Convention and turn them over to the authorities of the other country.

Mr. SHAROOD. What is the geographic range of that agreement, in terms of ability to seize a vessel?

Mr. BLOW. In the North Pacific Convention, it is in the area in which the Convention provisions apply, and that is east of 175 degrees west longitude.

Mr. SHAROOD. If you find a ship that is east of 175 degrees longitude, we may seize that vessel?

Mr. BLOW. If we believe that it is in violation of the Convention, yes.

Mr. SHAROOD. Go below and inspect the catch?

Mr. BLOW. Yes.

Mr. SHAROOD. Do we do any of those things with respect to Russian vessels fishing off the coast of the United States?

Mr. BLOW. I don't believe that the observation, the inspection provisions—

Mr. SHAROOD. I am talking about the bilaterals.

Mr. BLOW. No, there are no such provisions under the bilaterals.

Mr. SHAROOD. How do the Russians enforce their side of their bilaterals?

Mr. BLOW. Let me halt for a moment, Mr. Sharood.

My particular area of responsibility is the Pacific. I am somewhat less familiar with the Atlantic. There may be some provisions under

the new Atlantic bilateral with the Soviet Union which provide for some kind of inspection procedures. I am not aware of these.

Mr. SHAROOD. I am not aware of any, either.

Mr. DINGELL. Mr. Blow, if you would, as a kindness to us, please get us a list of these bilaterals and multilateral treaties, of which this Nation is a signatory, which affords rights to this Nation or other nations to seize.

I would also like to know those which do not afford that authority to seize.

[The information follows:]

LIST OF THE FISHERIES AGREEMENTS TO WHICH THE UNITED STATES IS A PARTY WITH REFERENCE TO THEIR PROVISIONS FOR JOINT ENFORCEMENT

Convention for the Establishment of an Inter-American Tropical Tuna Commission.

No provision regarding joint enforcement.

International Convention for the Conservation of Atlantic Tunas.

The Parties undertake to set up a system of international enforcement. A draft of an agreement for that purpose is being worked on by the Parties within the Commission. The current draft envisages boarding of each other's vessels on the high seas and inspection of gear and catches but not detention.

International Convention for the Northwest Atlantic Fisheries.

The Convention provides that the Commission may adopt "international measures of control on the high seas." The ICNAF Scheme of Joint Enforcement permits authorized officials of any of the sixteen members to board and inspect fishing vessels of any member. Inspectors can only report on observed violations.

International Whaling Convention.

There are no provisions for joint enforcement, however, the Parties have worked out arrangements for the exchange of observers.

International Convention on the Conservation of North Pacific Fur Seals.

A duly authorized official of any Party may board and search the vessel of another Party, except in the territorial waters of another state, if he has reasonable cause to believe that there is violation of the prohibition on pelagic sealing. If he finds a violation, he may seize the vessel. The seizing Party must notify the Party having jurisdiction and turn the vessel over to its authorized official as soon as practicable.

International Convention for the High Seas Fisheries of the North Pacific Ocean.

A duly authorized official of one Party may board and inspect a vessel of another Party in waters where the latter has agreed to abstain from certain fisheries. With reasonable cause, the vessel may be seized but must be promptly turned over to the Party having jurisdiction over it.

Convention for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and the Bering Sea.

Duly authorized officers of either Party may seize and detain vessels of the other for violations of the Convention or regulations adopted under it, delivering the seized vessel as soon as practicable to an authorized official of the country to which it belongs.

Convention for the Protection, Preservation and Extension of the Sockeye Salmon Fishery of the Fraser River System. ---

Vessels of either Party engaged in salmon fishing in violation of Commission regulations may be seized and detained by duly authorized officers of the other Party, to be delivered as soon as practicable to the Party to which they belong.

Convention on Great Lakes Fisheries.

No provision for joint enforcement.

Agreement on Reciprocal Fishing Privileges between the United States and Canada.

No provision for joint enforcement, since the waters covered are all within the fisheries jurisdiction of either Canada or the United States.

Agreement with Japan Regarding the King Crab Fishery in the Eastern Bering Sea.

No provision for joint enforcement, but "either Government shall, if requested by the other Government, provide opportunity for observation of the conduct of enforcement." Further, Japan has agreed to "take appropriate measures to ensure that officials of the United States be allowed to board Japanese vessels engaged in fishing operations in the eastern Bering Sea for the purpose of observation of the conduct of enforcement of the provisions of the agreement, and that the observations be carried out effectively."

Agreement with Japan Concerning Certain Fisheries Off the Coast of the United States.

No provision for joint enforcement, as the waters covered are all within the territorial sea and contiguous fishery zone of the United States, and thus enforcement by the United States is understood.

Agreement with Japan Relating to Salmon Fishing in Waters Contiguous to the Territorial Sea of the United States.

No provision for joint enforcement.

Agreement with the USSR Relating to Fishing for King Crab.

No provision for joint enforcement or inspection.

Agreement with the USSR on Certain Fishery Problems in the Northeastern Part of the Pacific off the Coast of the United States.

No provision for joint enforcement, but visits to fishing vessels and exchanges of scientists on research vessels may be arranged.

Agreement with the USSR Relating to Fishing Operations in the Northeastern Pacific.

No provision for joint enforcement.

Agreement with the USSR on Certain Fishery Problems on the High Seas in the Western Areas of the Middle Atlantic Ocean.

The Joint Enforcement Scheme of the International Commission for the Northwest Atlantic Fisheries, cited above, applies on a voluntary basis.

Agreement with Poland Regarding Fisheries in the Western Region of the Middle Atlantic Ocean.

There is a voluntary scheme for joint inspection similar to the ICNAF Joint Enforcement Scheme.

Agreement with the Republic of Korea Concerning Cooperation in Fisheries.

No provision for joint enforcement.

Mr. BLOW. To seize?

Mr. DINGELL. I would also like to know about authority to inspect below-decks, and whether we have just the authority to inspect from a distance or whether we have authority to board.

Mr. BLOW. Well, there are several treaties which do give us the right to seize, inspect, search, detain, but there are some bilateral agreements which do not give to either party the right to do this kind of thing.

We will certainly make a list of them.

Mr. DINGELL. Well, I would rather have a prudent analysis by the Department.

I am going to allude back to Mr. Sharood.

Mr. SHAROOD. Is it a fair statement that we have not, in any other agreement, bilateral or multilateral, turned over to a foreign nation the power over our vessels that we have turned over to Brazil?

Mr. BLOW. No; this is true.

Mr. SHAROOD. Have we ever attempted to secure comparable authority in negotiating any of our bilateral agreements with various nations that fish off our east coast, bearing in mind that, as in the case of the United States, they probably do not want to send a Coast Guard vessel or comparable vessel all the way over here to police their own ships? As we do not want to send one down to Brazil.

Have you made any such efforts to get comparable authority?

Mr. BLOW. Yes, we have

Mr. SHAROOD. Have you been able to?



Mr. BLOW. No, we have not.

Mr. SHAROOD. Thank you very much.

Mr. DINGELL. The Chair recognizes Mr. Studds.

The Chair has not asked any questions yet.

Go right ahead.

Mr. STUDDS. I wanted to compliment Mr. Sharood on those questions.

So far as I know, there are absolutely no arguments, either multi-lateral or bilateral which give us any enforcement authority of any kind. I am speaking of inspection, enforcement authority against vessels of other nations.

Precisely, it is part of the problem.

Now, if you know of such things, I wish you would tell us.

I believe that in our agreements our only course of action, given the strength of the Coast Guard at this point, is to turn them over to their host governments.

You can imagine the wrist-slapping that goes on in Moscow and Warsaw and other places.

Mr. BLOW. That is all these agreements do.

Mr. STUDDS. Except this one here.

Mr. BLOW. No, this agreement provides that the Brazilian authorities may detain.

Mr. STUDDS. But they can seize the vessel. Not only that, we reimburse them for doing it.

Mr. BLOW. On a reciprocal basis.

Mr. STUDDS. But we never got such rights for ourselves in the areas in which our fisheries are threatened, and I would point out to you one area that I know of, is the bilateral with Japan. You will recall, 2 months ago, when the Japanese vessels were in violation of that, we managed not to exercise that.

The catch of lobsters off the coast of New England.

Mr. BLOW. Not to seize what?

Mr. STUDDS. To seize the vessel.

Mr. BLOW. We had no authority to seize that vessel.

Mr. STUDDS. Do we not have a bilateral with Japan regarding fishing for lobster?

Mr. BLOW. It grants no authority to seize the vessel.

Mr. STUDDS. Let me rephrase that. Half their catch was red crab.

Red crab is a Creature of the Shelf.

Mr. BLOW. This is another question.

Mr. STUDDS. Well, the same vessel.

Mr. BLOW. But another question, and in that——

Mr. STUDDS. Well, the exercise of authority. We are very careful not to exercise it.

Mr. BLOW. We did not exercise it, as I recall it, because the vessel did pick up all its gear and the Japanese Government ordered it away. It returned to the sea all its catch, with the exception of a few lobsters.

Mr. STUDDS. Nineteen. Yes, I know, I am particularly awestruck with the solicitousness we show for other nations and their vessels.

Mr. BLOW. This was a portion of an agreement which had to do primarily with the Pacific. And in that agreement, in some minutes it

was recorded that the Japanese representatives stated that they had not fished for lobsters specifically, and they would not do so, and the primary thrust of the incident, as we understand it, was the lobster question.

Mr. STUDDS. I think that Mr. Sharood's point is an excellent one.

We have never acquired for ourselves, nor have we attempted to secure for ourselves the enforcement authority that you are now asking us to grant to another nation.

Mr. BLOW. As the chairman has asked us, we will provide to the committee a list of the various treaties and agreements which do or do not provide authority to seize and detain.

Mr. STUDDS. I expect the latter will be considerably longer.

Thank you.

Mr. DINGELL. Yes, the Chair is concerned.

Mr. Everett was addressing his questions to page 16. He was discussing whether or not this constitutes Brazilians as employees of the United States.

Now, let us look at this section and try to get some answers on some other questions with regard to Mr. Everett's questions.

Under this arrangement, would an employee of the Government of Brazil be considered as employed in the United States for liability under the Federal Tort Claims Act?

I expect you are not able to answer that question, but I think you ought to give us an answer on that at an appropriate time.

Now, let us assume that an employee of the Government of Brazil is injured while on this American vessel.

Does the Federal Government assume liability therefor for injury to him under the statute of liability of the U.S. Government as to federal employees for injury?

Does this in effect impose any liability under the Jones Act on the vessel owner for an individual, a Brazilian, injured while on the vessel?

I expect that we ought to have an answer here as to what would be the liability if there was to be a difference with regard to whether or not the vessel was going to be seized.

Let us say there was a fracas on the vessel, or some violence or shootout. What would the liability be?

These assume that an American citizen were injured by a Brazilian officer exercising his responsibility under this statute, what then would be the liability of the Federal Government, or who would be liable for the cost of the injury in the event that the seizure were to be wrongful? If it were to be correct, what would be the action liability of the vessel owner? What would be the responsibility of the vessel owner under the Jones Act if there were to be injury where Brazilians were seizing U.S. vessels under provisions of this law?

Assuming that the Congress would enact this legislation into law, what would be the liability of the United States under a statute of this kind in the event that the vessel is finally seized under other statutes under this committee?

Does the Fishermen's Protective Act come into play in the event that a vessel of the United States is seized under Section 10(a) of this legislation and is permanently held?

What is the liability of the United States with regard to seizure of cargo or catch or equipment?

Suppose the vessel is impounded permanently and there is loss of fishing time and so forth, what would be the U.S. liability?

The question would be, does this suspend the Fishermen's Protective Act? And, if so, under what conditions?

I am not sure whether the treaty does, or whether this proposed statute would do it.

[The information follows:]

#### SUSPENSION AREAS

*Question: Does the shrimp agreement with Brazil suspend the Fishermen's Protective Act and if so under what conditions?*

*Answer:* Section 4 of the Fishermen's Protective Act states: "The provisions of this Act shall not apply with respect to . . . a seizure made in accordance with the provisions of any fishery convention or treaty to which the United States is a party." Therefore the shrimp agreement with Brazil suspends the Fishermen's Protective Act with respect to any seizure by a duly authorized Brazilian official of a United States fishing vessel fishing for shrimp in violation of any provision of the agreement within the limits of the agreement area. The agreement does not suspend the application of the Fishermen's Protective Act in case of a seizure of a United States fishing vessel by Brazil in any other waters off the coast of Brazil beyond Brazilian jurisdiction as recognized by the United States nor in connection with any kind of fishing operation within the agreement area other than fishing for the species of shrimp specified in the agreement.

Mr. DINGELL. In any event, I would like to have answers to those points. In section 12, on the following page, a series of questions come to mind. "There is hereby authorized to be appropriated such amounts as are necessary for enforcement expenses pursuant to article VI of the treaty, to be deposited in the offshore shrimp fisheries fund."

*Question:* What would be the anticipated annual appropriation into that fund for the current fiscal year and the next 5 years?

[The information follows:]

#### COST OVER NEXT 5 YEARS

*Answer:* Assuming no change in the terms of the agreement as a result of renegotiation and no substantial change in the number of United States vessels engaged in the fishery and no change in the permit fees to be charged by the United States, the cost of the necessary appropriations for enforcement expenses over the next five years would be about \$385,000. That is the difference between the \$200,000 to be paid annually to Brazil for enforcement expenses and the \$615 to be collected for each of approximately 200 boats. Whether the administrative costs of the Department of Commerce would exceed the approximately \$20,000 to be collected from permit holders for that object is not known at present and would depend on how much of its overhead and the cost of the shrimp research which the National Marine Fisheries Service is doing would be charged to administration of the agreement and the implementing law.

Mr. DINGELL. The Chair recognizes Mr. Everett again.

Mr. EVERETT. I have one final question.

Mr. Blow, the American fishermen and the Brazilian Government are now voluntarily carrying out this legislation.

The treaty is the type that requires implementing legislation.

I think the United States has put itself in a precarious situation. In carrying this cooperative program, when the implementing legislation has not passed, and in fact, it may not be passed, what author-



ity, if any are you operating under that would permit the program to be carried out prior to the implementing legislation becoming law?

[The following was submitted in response:]

#### VOLUNTARY COMPLIANCE

*Question: Under what authority is voluntary compliance with the United States-Brazil shrimp agreement being carried on?*

Answer: The program of voluntary compliance is being carried on in accordance with the United States diplomatic note of May 9, 1972, which forms part of the United States-Brazil agreement on shrimp. That note states that "Pending the entering into force of the agreement . . ., the Government of the United States of America is prepared to make every effort to encourage the voluntary compliance by its industry of the provisions of the Agreement . . ." and "Following the exchange of instruments of ratification but prior to the passage of enabling legislation, the Government of the United States of America proposes to continue its efforts to encourage voluntary compliance." No particular authorization would appear to be required for the actions which United States agencies have undertaken in fulfillment of this commitment to date, since they amount only to serving as a channel for passing information to Brazil concerning the voluntary actions of our shrimpboat operators.

Mr. BLOW. Well, there is of course always the possibility that you may not be able to do it.

But our position on this, the situation in which we stood, was made known to the Brazilians and was recognized in one of the exchanges that took place.

So, it was understood that certain United States action under the treaty would be dependent upon action by the Congress.

Mr. EVERETT. Now that treaty has to be ratified, which has already been done. But where the treaty requires additional implementation legislation to provide you with the authority to carry out treaty, how can you enter into such a voluntary program without the authority?

Mr. BLOW. No, our situation was made clear to the Brazilian Government.

Mr. EVERETT. Even if you made the circumstances clear to the Brazilians, my point is that the next step is to pass implementing legislation that will authorize you to carry out the treaty.

Mr. BLOW. Everything that has been done so far is voluntary action.

Mr. EVERETT. Does it not have the endorsement of the State Department?

Mr. BLOW. One of the exchanges that took place and is part of the total agreement expressed the intent of both sides to pursue those actions set out in the treaty on a voluntary basis.

Mr. EVERETT. Are you not still limited by the fact that the treaty has to be ratified?

Mr. BLOW. This was made clear to the other side.

Mr. EVERETT. That is all the questions I have, Mr. Chairman.

Mr. DINGELL. Would you submit to this committee, if you please, gentlemen, a statement of how you came to the precise figure of 325 vessels?

Mr. BLOW. Yes, sir.

Mr. DINGELL. The Chair had already directed a similar question, but I want that to be responded to with some precision.

[Information to be supplied follows:]

## NUMBER OF VESSELS

*Question: How was the number of 325 vessels to be authorized by the United States to fish under the agreement arrived at?*

The rationale for limiting the number of boats in the fishery was not that there was a need to reduce fishing pressure because of clear indication of overfishing but that it was prudent to limit the expansion of fishing effort until the potential yield of the stocks could be assessed by scientific study. Therefore it seemed reasonable to set the limit at the actual level of the past few years, a level which did not appear to adversely affecting the stock. For the United States fleet, that level had been about 400 vessels, and that was the level which the United States proposed.

The Brazilians independently arrived at about the same figure as the estimated total number of boats which the resource could support profitably. They did this by a rather abstract analysis, based on sketchy data, to the effect that about 80,000 pounds of catch was needed for economic operation of a shrimp trawler for one year and that the average total annual crop of shrimp available in the agreement area was about 80,000 pounds x 400.

However, the Brazilians wished to have a number of places in the total potential fleet of 400 boats reserved for the planned Brazilian fleet. On further consideration and consultation with our industry advisers, the United States negotiators judged it unlikely that we would in fact want to place 400 boats in the fishery in the next few years, so we acceded to the Brazilian's wish and agreed to limit our effort to 325 boats. In fact, under the voluntary compliance program, about 200 United States boats have registered to fish in accordance with the terms of the agreement.

Mr. DINGELL. Now, you have set forth, at page 6, the figure \$615, for years other than 1973. \$1,330 for 1973 and \$200 for administrative cost.

Can you inform us as to how you arrived at that figure please, and also, if you please, what those moneys will be expended for?

I will not ask you to submit it to us at this time; I will ask you to provide it for the record.

[Information to be supplied follows:]

## ORIGINS OF FIGURES IN H.R. 8529

The figure of \$200,000 is the amount which the United States agreed, in the shrimp treaty, to pay Brazil annually for enforcing compliance with the provisions of the agreement by United States vessels. It represents the best estimate which could be made at the time of the cost to the Brazilian Navy of the additional patrolling and surveillance which this service to the United States would require.

The figure of \$615 as the price of an annual permit fee to cover the costs of enforcement was obtained by dividing the figure of \$200,000 by 325, the potential total number of boats that could be authorized to fish under the terms of the agreement.

The price of an annual permit fee would be set for 1973 only at \$1,230 or twice the regular annual permit fee. The reason is that it was foreseen that fishing in 1972 would be entirely on a basis of voluntary compliance, and it was anticipated that some shrimpboat operators, realizing this, might fail to pay their permit fee retroactively for that year and thus avoid bearing their fair share of the enforcement expenses. In fact, all operators in the fishery have placed an amount in special bank accounts earmarked to cover the 1972 permit fee, and when that money can be transferred to the Government it will be credited against the 1973 fee.

Mr. DINGELL. You have indicated a whole series of provisions which will be included in the permits to be issued.

I would assume the State Department will be the issuing agency, is that correct?

Mr. BLOW. No, sir.

Mr. DINGELL. Who will be?

Mr. BLOW. The Secretary of Commerce.

Mr. DINGELL. The Secretary of Commerce; then the Chair will inquire of the Secretary of Commerce precisely what will go into the permit provisions. Because I am curious to know what burdens we are going to saddle the American fishermen with under that particular section.

Well, I guess that is all the questions I have.

Mr. Steele?

Mr. STEELE. I have no questions at this time.

Mr. DINGELL. Any further questions?

Mr. KYROS. Actually, this is an issue concerning the recognition of Brazil's 200-mile limit. Do you not consider it that way?

Mr. BLOW. No.

Mr. KYROS. Of course, it is. You are causing our ships to get licensing to go within those limits; that is the agreement you made.

Mr. BLOW. But as Mr. Van Campen has pointed out to me, the agreement would have been worthwhile in itself, even without a claim by Brazil.

In other words, to limit the number of vessels until you can get enough information about the capability of the shrimp resources, the yield capability of the fishery.

Mr. KYROS. Prior to this time, they had a 200-mile limit out of which we had to keep our vessels, is that right?

Mr. BLOW. That was the asserted claim of Brazil.

Mr. KYROS. And we respected it.

Mr. BLOW. No.

Mr. KYROS. Are we not codifying by this agreement the 200-mile Brazilian limit?

Mr. BLOW. No, sir. This is a potential accommodation, as I have said. However, our position is specifically reserved. The positions of both countries are reflected in the treaty.

Mr. KYROS. Mr. Blow, did you tell me this is a practical accommodation when I asked you to identify the agreement?

Practical identification of what, the limit?

Mr. BLOW. No, of the interest of our fishermen in continuing to have access to a fishery which they have developed. The interest of the Brazilian Government in the conservation of resources on which they hope to have a fishery themselves.

Mr. KYROS. Without these permits that you are going to have, the Brazilians would not let our fishermen within the 200-mile limit; is that correct?

Mr. BLOW. There is a question of whether the Brazilians would enforce their decree or not.

Mr. KYROS. Up to now, would they not be willing to enforce it with Ecuador and Peru?

Mr. BLOW. We do not know. I understand that our fishermen did fish in this area, after the proclamation and before this agreement was negotiated.

Mr. KYROS. It is my understanding that you want to leave it that in no way does the State Department see this as an agreement whereby we give *de facto* recognition to Brazil's 200-mile limit?

Mr. BLOW. That is correct.



MR. PITMAN. Mr. Kyros, I think we went into this question at some length earlier.

It is our position, and I think this is reflected by the absence of reaction we have had from other countries with regard to this agreement, that in fact it does adequately protect our position under international law of not recognizing fisheries' jurisdiction beyond 12 miles.

To our knowledge, neither the maritime countries nor the coastal States, in the negotiations for the law of the sea, have intimated in public that our reaching this agreement with Brazil in any manner jeopardized our judicial position or objectives in the negotiations.

MR. KYROS. Why can we not reverse the situation off the New England coast and strike the same kind of agreement with the Soviet Union, Rumanians, and others that have trawlers off our coast?

MR. BLOW. We have not made any such claims.

MR. KYROS. We have made no such claims for our fisheries, as the Brazilians have.

MR. BLOW. No.

MR. KYROS. Thank you very much.

Thank you, Mr. Chairman.

MR. DINGELL. Any further questions?

MR. STUDDS. One further question.

Would you support this bill if we were to amend it by adding a section which gave the United States the rights which we give to Brazil with respect to foreign vessels off our coast?

MR. BLOW. With respect to all foreign vessels off our coasts?

MR. STUDDS. Yes.

MR. BLOW. I am afraid we could not.

MR. STUDDS. I did not think so.

Thank you.

MR. DINGELL. Gentlemen, one last question.

Can you make the statement that this bill is not a precedent and that this treaty will not encourage similar actions by almost any nation in the South or Central America to assert a 200-mile fishing zone?

MR. BLOW. Well, as Mr. Pitman has just said, we do not consider that this is a precedent in this respect.

We do not believe that our juridical position has been impaired.

MR. DINGELL. If we pass this bill, can we expect Mexico to extend its fisheries lane to 200 miles in the Caribbean or the Gulf?

MR. BLOW. Where it is a matter of accommodating the conservation concerns of the coastal States, and the fishing interests of the fishing States—

MR. DINGELL. We have pending the International Meeting on the Law of the Sea Conference. Are we not submitting ourselves to different kinds of bilateral or perhaps trilateral agreements between this Nation and other nations all around the world for different kinds of territorial seas?

MR. BLOW. This is precisely what we are trying to avoid in the fishery articles which we have tabled. To obtain some generally accepted international standards.

MR. DINGELL. Well, let us address ourselves now to Ecuador, Peru, and Chile.

They assert a 200-mile jurisdiction, and they assert the basis for that 200-mile jurisdictional assertion the fact that they have a conservation concern. How can you distinguish between Brazil's position and between Ecuador, Chile, and Peru?

MR. BLOW. We have tried, for a long, long time, tried to reach some conservation agreement with Ecuador and Peru for example.

We have been unable to do so. We have shown them, and they are aware of, the agreement with Brazil. As I understand it, one of the problems with Ecuador and Peru is that their legislation or decree which asserts 200-mile jurisdiction has no provision for international agreement, whereas that of Brazil does.

MR. DINGELL. Well, gentlemen, the committee thanks you.

MR. STEELE. Mr. Chairman, just a moment.

MR. DINGELL. Yes.

MR. STEELE. I think that the chairman and the other members are addressing the critical points here.

We are being told constantly that we cannot move unilaterally to take any action which would in any way upset the Law of the Sea Conference, or weaken our position in the Law of the Sea Conference.

Here we are being asked to give our stamp of approval to an agreement which, no matter how you verbally justify it, very clearly is going to complicate our position, since under this agreement we recognize the rights of a foreign country to extend its jurisdiction.

There is no question as to what essentially is being done, and I do not see how we can take one position when we are talking about the Brazilian fisheries, and we can take another position when we are talking about U.S. fisheries.

That is clearly what we are talking about here, and that is exactly what the chairman's questions and the rest of the members' questions show deep concern for.

You do appreciate what we are getting at?

MR. BLOW. Yes, I do.

MR. STEELE. Do you or don't you appreciate our point? You come here and give your testimony against our position, and then you go back to your office building and continue to ignore our concern. Is there any communication here, or not?

MR. BLOW. I think there is a great deal of communication. There are some differing positions and views in this matter.

We do not feel that entering into this agreement has impaired our negotiating position in the Law of the Sea Conference. We could not, as a conservation-conscious country, afford not to discuss matters of conservation; and we have entered into this agreement on this basis.

MR. STEELE. If conservation is that important, then why can we not give more thought and priority to the conservation of the New England fisheries?

MR. BLOW. We have given thought.

MR. STEELE. In this case, conservation matters in the case of Brazil, in your view, take precedence over the diplomatic and legal considerations.

However, in the case of New England fisheries, the diplomatic maneuvering takes precedence; that essentially is what you are telling me.

Mr. BLOW. I think we are talking about two different things. We have been trying to get conservation agreements with the other countries that fish in New England's areas.

We have found great difficulty in doing so.

Mr. STEELE. I know a very good way how we might make some more progress.

Why do we not do essentially what Brazil is doing, and then we could come to an agreement with the Russians and the others. Only this time we will be on the other side of the coin negotiating from a position of strength.

Does that not make sense?

Mr. BLOW. We do not consider that unilateral extension of jurisdiction is consistent with the law.

[Additional information follows:]

#### ADDITIONAL QUESTIONS AND THEIR ANSWERS

*1. May not the amount to be paid to Brazil for enforcement services go up after January 1, 1974?*

Answer: Since any of the terms of the agreement would be subject to renegotiation in case the agreement is extended, this is certainly a possibility. However, in the absence of any data on the cost of enforcement activity to the Government of Brazil, it is difficult to see at the present moment any rationale for an increase. The amount of \$200,000 per annum provided for in the present agreement is presumably based on the activity necessary for monitoring the fishing operations of 325 vessels, the maximum number provided for in the agreement. Since the actual number operating is only about 200 and is deemed unlikely to increase greatly above that level, it is not easy to see a basis for any claim of increased enforcement costs.

*2. Will the United States have to pay Brazil the amount for enforcement expenses specified in the agreement if implementing legislation is not enacted?*

Answer: According to the strict letter of the agreement, no, since the United States diplomatic note of May 9, 1972, which is part of the agreement states "The Government of the United States of America shall, after appropriation of funds by Congress, compensate the Government of Brazil, etc." At the present time the only prospect for appropriation of the necessary funds depends on the authorization contained in the proposed implementing legislation. The Executive would, however, probably consider this a debt of honor, since the United States has enjoyed the benefits of the agreement and Brazil has faithfully carried out the obligation to provide enforcement services under the terms of the treaty. Therefore, even if the proposed implementing legislation fails of enactment, the Executive Branch would probably continue to seek authorization of an appropriation by the Congress to discharge this debt.

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DEPARTMENT OF JUSTICE,  
WASHINGTON, D.C., October 24, 1973.

MR. WILVAN VAN CAMPEN,  
*Office of the Coordinator of Ocean Affairs,  
Department of State,*

DEAR MR. VAN CAMPEN: This is in response to your letter of August 7, 1973, requesting comments of the Justice Department on a number of questions concerning draft legislation to implement the recent United States-Brazilian Shrimp Agreement. The questions asked by a Subcommittee of the House Merchant Marine and Fisheries Committee during State Department testimony on the legislation are set out below and followed by our suggested replies.

1. When a Brazilian is enforcing the agreement aboard an American vessel, is he "employed by the United States" for purposes of the Tort Claims Act?



No, the Brazilian officials, even though acting by the express permission and on behalf of the United States in enforcing the Agreement would not be deemed "employees of the Government within the meaning of 28 U.S.C. 1346(b). The term employee is defined in 28 U.S.C. 2671 as including "officers or employees of any federal agency \* \* \* and persons acting on behalf of a federal agency in an official capacity, temporarily or permanently in the service of the United States \* \* \*." A federal agency includes "corporations primarily acting as instrumentalities or agencies of the United States but does not include any contractor with the United States." 28 U.S.C. 2671. In *Logue v. United States*, 41 L.W. 4815 (June 11, 1973), the Supreme Court held that a person was not an "employee" of the Government within the meaning of the Federal Tort Claims Act unless his physical conduct was under the control of the United States. Persons performing work for independent contractors which work would otherwise have been done by United States' employees were held not to be Government employees, 41 L.W. at 4817. Because the United States has no authority to control the physical conduct of the Brazilian officials enforcing the Agreement, *Logue v. United States* compels the conclusion that they would not be Government employees for purposes of the Federal Tort Claims Act.

In addition, a tort committed in the course of shipboard law enforcement would clearly be of admiralty jurisdiction, cognizable under the Suits in Admiralty Act, 47 U.S.C. 741-752, or the Public Vessels Act, 46 U.S.C. 781-790. As such, it would be excluded from the Tort Claims Act coverage. 26 U.S.C. 2680(d).

2. Is the United States government liable if the Brazilian is injured on an American vessel under the statute of liability to federal employees?

No, 5 U.S.C. 8102 imposes liability upon the United States for the disability or death of an employee in certain circumstances. 5 U.S.C. 8101(1)(B) defines employee as including "an individual rendering personal service to the United States similar to the service of a civil officer or employee of the United States, without pay or for nominal pay, when a statute authorizes acceptance or use of the service, or authorizes payment of travel or other expenses of the individual. Although H.R. 8529 does authorize Brazilian officials to act on behalf of the United States in enforcing the Agreement, and Article VI of the Agreement provides that the United States shall compensate Brazil for enforcement expenses, we believe that Section 8102 was intended to cover only persons whose physical conduct was under the control of the United States. That element is clearly lacking here and a Brazilian official would not be deemed a government employee within the meaning of Section 8102.

The Attorney General has at least once before concluded that the Federal Employees Compensation Act does not apply to members of an international fisheries commission. 36 Op. Atty. Gen. 111 (1929).

3. When the Brazilian is injured while enforcing the agreement on an American vessel, is the vessel owner liable under the Jones Act?

No, to recover under the Jones Act, 46 U.S.C. 688, the plaintiff must have an employment relation with the defendant. *Moragne v. States Marine Lines*, 398 U.S. 375, 394 (1970). Since the Brazilian officials would not be employees of the vessel owner, the Jones Act would be inapplicable to any injuries suffered by those officials.

4. Would the answer to the prior question differ if the vessel were going to be seized?

No, the seizure of the vessel would not create any employer-employee relation between the vessel owner and the Brazilian officials. See response to question 3.

5. Is the United States liable to the Brazilian Government for injury received by persons resisting arrest?

No, any employee of private vessel owners that might inflict injury on Brazilians enforcing the Agreement would not be a Government employee for purposes of the Federal Tort Claims Act. See, *Logue v. United States*, *supra*.

6. Is the United States liable for injury caused by the Brazilian acting under the agreement and statute?

No, as discussed in response to question 1, Brazilians acting pursuant to the Agreement and the statute would not be deemed Government employees under the Federal Tort Claims Act. Accordingly, the United States would not be liable for the acts of the Brazilian officials.

7. Would the answer to the prior question differ if the seizure were wrongful?

No, a Brazilian official conducting a wrongful seizure is no more a Government employee of the United States than is one conducting a proper seizure. See response to question 6.

8. Is the vessel owner liable, under the Jones Act, for injury caused during seizure?

No, as discussed in response to question 3, the vessel owner would not be liable for injury to the Brazilian officials under the Jones Act because they are not his employees.

Of course, the vessel owner would remain liable under the Jones Act for injuries caused to his employees during a seizure by Brazilian officials because of the unseaworthiness of the vessel or because of the owner's own negligence. However, the Agreement and H.R. 8529 would not enlarge the vessel owner's liability to his employees under the Jones Act.

9. What is the United States liability if the vessel is ultimately seized under another statute?

None, other than the Fishermen's Protective Act, as amended, 22 U.S.C. 1972, *et. seq.*, no statute makes the United States liable for foreign seizure of private vessels. See answer to question 10.

10. Does the Fishermen's Protective Act pertain to a seizure under Section 10(a) of this Act?

No, the Fishermen's Protective Act expressly provides that its "provisions . . . shall not apply with respect to a seizure . . . made in accordance with the provisions of any fishery convention or treaty to which the United States is a party." 22 U.S.C. 1974.

11. What is the United States liability for seizures of cargo, catch or equipment?

None, if Brazilian officials seize cargo, catch or equipment, there is no liability on the United States because neither existing United States legislation, the Shrimp Agreement nor H.R. 8529 would impose such liability on the United States, as has been discussed in response to other questions.

If United States Government employees seize cargo, catch or equipment pursuant to the enforcement provisions of the Agreement, no liability exists under the Tort Claims Act because claims based on the detention of goods by law enforcement officers are excepted from the Act's coverage. 28 U.S.C. 2680(c). In addition, seizures by United States employees under the Agreement would probably occur in a foreign country and any claims would be excepted from the Tort Claims Act on the basis, 28 U.S.C. 2680(k). Finally, United States seizures under the Agreement would probably be deemed an exercise of a "discretionary function" and excepted from the Tort Claims Act. 28 U.S.C. 2680(a).

12. What is the United States liability if the vessels are permanently impounded, for loss of fishing time, etc.?

None, see response to questions 9, 10 and 11.

I hope that this will be useful in preparing your response to the Subcommittee.

Sincerely,

WALLACE H. JOHNSON,  
Assistant Attorney General,  
Land and Natural Resources Division.

Mr. DINGELL. The Chair notes our next witness is Mr. Robert Schoning, director, National Marine Fisheries Service, Department of Commerce.

The Chair also announces that it is the intention of the Chair to finish right now. I think we can finish this by 1 o'clock.

And then our next witness after that will be Mr. Ernest Donini, and the Chair indicates that we will hear Mr. Donini.

Gentlemen, the committee thanks you. I hope you understand our questions are of professional character and are not in any way to reflect on the high regard that the Chair holds for you.

Do you have any associates that you want to have with you? The way it has been going, it might be a good idea to have as many as you can.

STATEMENT OF ROBERT W. SCHONING, DIRECTOR, NATIONAL MARINE FISHERIES SERVICE, DEPARTMENT OF COMMERCE; ACCOMPANIED BY HAROLD B. ALLEN, DEPUTY REGIONAL DIRECTOR, SOUTHEAST REGION, NATIONAL MARINE FISHERIES SERVICE; AND RICHARD M. PARSONS, FORMERLY OF THE GENERAL COUNSEL'S OFFICE, NOAA, PRESENTLY OF THE DIVISION OF LAW ENFORCEMENT, BUREAU OF SPORT FISHERIES AND WILDLIFE, DEPARTMENT OF THE INTERIOR; AND LARRY L. SNEAD, FOREIGN AFFAIRS OFFICER, OFFICE OF INTERNATIONAL AFFAIRS, NOAA

Mr. SCHONING. If the Chair pleases, I would like to recognize Mr. Harold Allen, our deputy director of the Southeast Region, Mr. Richard Parsons, who was a staff attorney in the NOAA Office of General Counsel at the time of the agreement, and now is with the Department of the Interior; and Mr. Larry Snead, who is involved in our foreign affairs operations. These gentlemen have been intimately involved in the United States-Brazil shrimp agreement and the proposed implementing legislation.

Mr. DINGELL. Very good.

We are happy to recognize you and your statements, gentlemen.

Mr. SCHONING. In the interest of time, Mr. Chairman, if you like, I will submit the statement for the record and make a few brief comments.

[Prepared statement follows:]

STATEMENT BY ROBERT W. SCHONING, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE

Mr. Chairman and members of the committee, I appreciate the opportunity to make a statement in support of H.R. 8529, the Administration's bill to implement the shrimp fishing agreement with Brazil.

The United States-Brazil shrimp fishing agreement was signed on May 9, 1972, was ratified by both Governments and entered into force on February 14, 1973. It will expire on January 1, 1974 unless extended by the Parties. The agreement established a shrimp conservation zone off the coast of Brazil, within which the activities of the two countries will be regulated. The agreement sets forth the mutual interest of the two governments in the conservation of shrimp in a defined area on the high seas. The agreement area is for the most part within Brazil's claimed 200-mile territorial sea but the boundaries do not coincide with the fishery jurisdictional limits recognized by either country. The area covers adequately the fishing grounds off Brazil which are economically important to U.S. shrimp interests.

The proposed legislation would authorize the Secretary of Commerce to issue annual permits for U.S. vessels, consistent with a numerical limit and other requirements prescribed by the agreement, to fish within the area of the agreement. It prescribes the fees for these permits and the procedures under which the Secretary of Commerce would issue them.

The bill would establish in the Treasury a special revolving fund, called the Offshore Shrimp Fisheries Fund, for use in defraying the financial obligations assumed by the United States under the terms of the agreement. This special fund would basically be composed of permit fees, deposits of voluntary compliance made by vessel owners willing to abide by the terms of the agreement prior to the passage of implementing legislation, appropriated funds, and amounts collected for minimum penalties. It would be for the annual payment of \$200,000 which the United States is obligated to make to Brazil for enforcement services.

The legislation would require any person in charge of a licensed vessel operating under a permit to keep a logbook record of his fishing operations in a prescribed



form, and would also prohibit any person in charge of any U.S. vessel from performing certain acts in the agreement area, such as fishing without a permit, engaging in the transshipment of shrimp with other than authorized vessels, fishing with unauthorized types of vessels or gear, and fishing during closed seasons.

The bill sets the amounts of penalties and establishes procedures relating to their payment. Enforcement procedures are also established, including the authorization of Brazilian enforcement officers to act on behalf of the United States in enforcing the provisions of the agreement. When a Brazilian enforcement officer has reasonable cause to believe that a violation has been committed, he may seize and detain the vessel for the sole purpose of delivering it, as soon as practicable to an agent of the United States Government. The Secretary of Commerce is authorized to issue all regulations necessary to carry out the purposes and objectives of the treaty and the bill.

We are strongly in favor of enactment of the proposed legislation. When the agreement was signed in May 1972, a separate exchange of notes was signed to the effect that the United States would seek voluntary compliance by the U.S. shrimp industry pending entry into force of the agreement and prior to the passage of implementing legislation by the United States. The U.S. shrimp industry participants in the fishery have thus operated in accordance with the agreement provisions for over a year on a voluntary compliance basis. There are presently 195 U.S. vessels operating under this agreement.

Passage of the proposed legislation is necessary to make the provisions of the agreement mandatory on those U.S. vessels that desire to participate in the fishery, and to enable the U.S. Government to take appropriate action on U.S. violations that Brazilian enforcement agents may bring to our attention. Passage of the bill is also necessary in order for the United States to be able to transfer voluntary compliance funds, set aside by industry, into the Off-shore Shrimp Fisheries Fund in the Treasury to be used in compensating Brazil for enforcement costs associated with the agreement. Further, passage of the bill prior to the agreement's expiration date is considered vital if the agreement is to be successfully extended. The attitude of Brazil concerning an extension of the agreement is expected to depend largely on U.S. actions to regulate the activities of U.S. fishermen operating off Brazil and to meet our financial commitments under the current agreement.

If the bill is not passed, there would be no means of regulating the activities of U.S. fishermen to uphold our treaty commitments with Brazil. Nor would there be any means to take legal action against persons who may violate the terms of the agreement. Similarly, there would be no mechanism established for the collection, appropriation, or disbursement of funds to discharge our financial obligations to Brazil.

Furthermore, it is conceivable that if the United States does not enact this implementing legislation, Brazil might decline to extend the agreement beyond January 1, 1974. If that were to happen, Brazil would then be in a position to institute unilateral controls affecting our fishermen under the terms of Brazil's 1971 Decree concerning the operations of foreign fishing vessels within their claimed 200-mile territorial sea.

It is our understanding that the U.S. fishermen involved in this shrimp fishery off Brazil are strongly in favor of this bill in order to continue the agreement. We understand that Brazil also supports the continuation of the agreement but this support might lessen if the United States does not move to implement the agreement.

Therefore, for the reasons cited above, we believe that passage of the proposed legislation in the very near future is both desirable and necessary. Mr. Chairman, we have identified some technical points in the bill that could be clarified with some additional language but rather than going into those points now, we will be glad to work with the Committee staff to take care of these issues.

Mr. SCHONING. We have been active from the beginning in the deliberations with Brazil.

We are convinced that the present agreement is working well and wisely, utilizing the shrimp resources off Brazil and adjoining nations. This permits our fishermen to continue in an important fishery that our people developed, and we think it is in the best interests of our fisher-

men to continue the agreement and enact the implementing legislation, H.R. 8529, into law.

We will be glad to answer any questions.

Mr. DINGELL. Mr. Kyros?

Mr. KYROS. Mr. Schoning, I am glad to see you here this morning. Is it not a fact that what we are doing is agreeing to the 200-mile limit? There is no question of that fact, is there?

Mr. SCHONING. We do not think so.

Mr. KYROS. Why do you not think so?

Mr. SCHONING. Well, first, the area is not entirely Brazil's. We are talking about areas that are adjoining as well, so the area does not entirely include that claimed by Brazil.

Mr. KYROS. Did not Brazil claim the 200-mile limit?

Mr. SCHONING. It is my understanding, yes, sir.

Mr. KYROS. By this agreement, they let us inside that 200 miles.

Mr. SCHONING. By this agreement (certain consideration is made on the part of both countries) we continue to fish in this area.

Mr. KYROS. On the part of Brazil, we pay them fees, obtain licenses, and keep their records in return for permission to fish there. What does the United States get out of it?

Mr. SCHONING. We are fishing for resources from 12 miles out off their coast, and we are participating in conservation programs.

Mr. KYROS. Resources juridically, you have heard that phrase before earlier. Resources that juridically we claim ourselves, anyway, because they would be beyond the 12-mile limit, and we do not recognize extensions of the 12-mile limit, do we?

Mr. SCHONING. No.

Mr. KYROS. We have given up everything while the Brazilians gave up nothing.

Mr. SCHONING. I suppose it is a matter of judgment.

We feel that by this type of activity we are participating actively in a sound conservation program that will perpetuate the resource and allow us to actively fish when we are the major participants in the fishery which we developed some ten years ago.

Mr. KYROS. In 1965, 1966, off the New England coast, we had knowledge that the haddock fishery was being depleted. Why should we not have acted in the same way then as the Brazilians have acted to conserve their fisheries now?

Mr. SCHONING. It can be argued, certainly, that some specific protection for the resource could have some merit.

Mr. KYROS. Now, from a specific standpoint, but on an analogous point, we let our haddock fisheries become depleted, extinct, whereas they are protecting theirs; is that not a fact?

Mr. SCHONING. Mr. Kyros, at the time that you referred to—it was the position of our government not to unilaterally extend our fishery jurisdiction in the way that I understand that you are proposing as a possibility.

Mr. KYROS. You are the director of the Marine Fisheries?

Mr. SCHONING. Yes, sir.

Mr. KYROS. So you knew about the fisheries off the New England coast, and you knew about the studies of the haddock fisheries?

Mr. SCHONING. In 1965 I was not associated with the National Marine Fisheries Service.

Mr. KYROS. Where were you then?

Mr. SCHONING. I was with the State of Oregon in fisheries work.

Mr. KYROS. So, do I understand it, then, that we can believe that your proposition is simply because the United States does not believe in unilateral extension of any of its fishing borders to protect fisheries, that are in jeopardy and therefore we differ from the case of Brazil?

Mr. SCHONING. It has been our practice, Mr. Kyros, to attempt to accomplish the same purposes through bilateral or multilateral agreements. It is our belief, however, that while these have not been totally effective in solving the problem, they have been effective in many ways.

Mr. KYROS. Is this a bilateral agreement with the Brazilians?

Mr. SCHONING. Yes.

Mr. KYROS. Name one thing, one consideration that the Brazilians give us in this agreement since our men must go out there and license vessels, keep logbook records of the fishing operations, pay fees, assess penalties relating to payments. It includes the authorization of Brazilian enforcement officers, et cetera.

What does Brazil give up?

Mr. SCHONING. I am reminded by Mr. Parsons that they have agreed to set aside the juridical position so that we can fish within the area beyond 12 miles.

Mr. KYROS. Which is precisely the point. They have a 200-mile limit, and they say we can fish within their 200-mile limit, which they unilaterally declared. We are setting a precedent, that Peru and Ecuador can follow.

Whereas, you do not dare take any action on behalf of the New England fisheries, where others are causing massive depreciation on fisheries that are nearly extinct.

Mr. SCHONING. We are attempting to aid the New England fisheries through multilateral agreements.

Mr. KYROS. How many members are in ICNAF right now?

Mr. SCHONING. Sixteen.

Mr. KYROS. Sixteen?

Mr. SCHONING. Sixteen, yes.

Mr. KYROS. Has ICNAF ever struck one in favor of the New England fisheries?

Mr. SCHONING. I am not as familiar with that as I might be. A number of gains have been made through these deliberations by restrictions on catch, and these deliberations are becoming more pointed than last year.

Mr. KYROS. I will just thank you, Mr. Schoning, for protecting the interests, for the first time, of the U.S. fisheries at sea.

Mr. STEELE. Would the gentleman yield?

Mr. KYROS. Yes.

Mr. STEELE. I would like to ask, really, which would you rather be, a Brazilian fisherman or a New England fisherman, in terms of the protection and help you would be receiving from your government?

Would you feel better protected as a Brazilian fisherman or a New England fisherman, by your government?

I will tell you, I am serious.

Mr. SCHONING. I recognize you are, sir.



Frankly, I am not familiar enough with the specific benefits of each of the fishermen so I would be a little hesitant to comment.

Mr. STEELE. Certainly, based on the testimony we have heard here this morning; one would have to conclude that the Brazilian fisherman is far better protected by his government than the New England fisherman is protected by his.

Would you agree with that?

Mr. SCHONING. I am not sure I would. I think it would depend on the fisheries.

Mr. STEELE. We are talking about the New England fishermen.

We are talking about the haddock and we are talking about the cod, and we are talking about the flounder and lobsters.

It is pretty clear what we are talking about.

Mr. SCHONING. In my newness to the job, and unfamiliarity with the the fishery, I am not an authority by a long shot. But it is my impression that the Government has provided some protection and has demonstrated concern. Maybe not enough concern and maybe not enough protection to the fisheries, so that they can exist and have the rights that they feel they should have off our shores.

But there are certain benefits that are available and have been obtained from these agreements where they have other nations cut back on their catches, restrict methods of fishing, areas of fishing, kinds of fishing, to both protect the resource and to give our fishermen a better shake.

Now, there is much agreement on the fact that it is not enough.

Mr. KYROS. Let me ask you this question:

In Brazil, in this area of this fishery, do the Japanese and Russians fish there?

Mr. SCHONING. The Japanese do.

Mr. KYROS. Do they fish with license fees and permits?

Mr. SCHONING. I will have to defer to our Deputy Regional Director, Mr. Allen, who is more familiar with that fishery.

Mr. ALLEN. The Japanese have not reached an agreement with the Brazilians, to my knowledge, and in fact recently there have been two Japanese vessels apprehended by the Brazilians and seized.

I do not know what actions the Brazilians have taken against them.

Mr. KYROS. What do the Japanese say? They do not recognize the 200-mile limit that Brazil has established?

Mr. ALLEN. I do not know what the Japanese have said on that.

Mr. KYROS. Is it not important how other foreign fishermen treat this fishery? Is it not useless to talk about conservation with Brazil if others fish there at will?

Mr. ALLEN. The Brazilians have reached agreements with two other countries to allow 30 vessels, 15 from each country, into the area. They are maintaining a limit on the total effort.

Mr. KYROS. No further questions, Mr. Chairman.

Thank you.

Mr. DINGELL. Thank you, Mr. Kyros.

Mr. Steele?

Mr. STEELE. No, Mr. Chairman, I have asked my questions. Thank you very much. I have no further questions.

Mr. DINGELL. Mr. Everett?

Mr. EVERETT. On page 5 of your statement, you say: "Furthermore, it is conceivable that if the United States does not enact this implementing legislation, Brazil might decline to extend the agreement beyond January 1, 1974."

What kind of alternative do you have for the United States if this implementing legislation is not passed?

Do you contemplate the United States will try to enter into another agreement, or just what?

Mr. SCHONING. Based on my impression of the developments to date, and our evaluation of their merits, we would advocate continuation of this agreement. Our industry is strongly in support of it.

It permits them to actively participate in this fishery they developed. We are one of the major developers and they would like to continue it.

If it cannot be done by the legislation, which would permit or provide for mandatory provisions, which would allow us to more rigidly control people in various ways, the registration, the logbooks, and the payment of fees, all of these things, then we would attempt to continue on this voluntary basis which has some significant shortcomings—In our opinion it would indicate, to some extent, a lack of faith. Although, as Mr. Blow pointed out earlier, in the deliberations we pointed out the potential problems that we faced in bringing it to fruition.

It certainly has been useful.

Mr. DINGELL. I am sorry that Mr. Blow is not around for me to direct a comment to him.

Mr. SCHONING. Let me make this observation, if I may, sir. One of the alternatives that comes to mind is that we stop fishing there.

Mr. DINGELL. It is on the high seas, is it not?

Mr. SCHONING. At the moment, that is right. I recognize it is the high seas, but if due to the harassment of U.S. fishermen and all the other aspects, we chose not to become involved, in my opinion, that would not be a viable alternative from the standpoint of our industry.

The second one is to approach it from the same standpoint that the tuna industry took with regard to Chile, Ecuador, and Peru. That is we will not recognize Brazil's self declared 200 mile fisheries jurisdiction and we would continue to fish as if Brazil did not have that declaration. Then if Brazil seized us, we will take care of the matter under the tuna approach.

That has been my discussion with the U.S. shrimp fishermen and they prefer not to be involved in the payment of fines, the harassment, and those problems and procedures that the tuna people are involved in.

They felt a more realistic solution could be accomplished by this bilateral agreement. Whether it is a wise decision will have to be determined over a period of time.

It is my understanding that the U.S. shrimp fishermen are content with the way it has worked out, and they benefited from it by not being seized and brought into ports and fined very large sums of money.

Mr. DINGELL. I notice some of the State Department representatives are still in the room, and this question is directed to Mr. Van Campen and the others.

The provision here is for payments by this government of \$200,000 to the Brazilians.

The matter of the treaty is to be renegotiated after January 1974.

How are we to know that \$200,000 figure is not going to shoot up?

Mr. SCHONING. As far as I can comment, sir, and I was not involved in any deliberations, there is no guarantee of that. It is a matter of negotiating effectiveness, I assume, and subject to what agreement there was with the Brazilians when the original document was signed.

Mr. DINGELL. I wish you had not said negotiating effectiveness.

The Russians have all kinds of warheads, and I could go down the list and tell you other unfortunate experiences that I think we have had with regard to matters of this kind around the world.

Can you tell us how far our fishermen have been fishing off Brazil?

Mr. SCHONING. They are some 12 to 100 miles off the coast.

Mr. DINGELL. 12 to 100 miles off the coast?

Mr. SCHONING. Yes, sir.

Mr. DINGELL. I have asked the State Department to submit to us a map indicating the areas in agreement.

I would appreciate if you would submit to us a map indicating the areas of the fisheries, if you please.

Mr. SCHONING. Yes, sir, we have one with us right here.

Mr. DINGELL. Well, I will not ask you to go into that in any great detail, but it would be helpful if you will submit something like that to us.

What are the tonnages of the fisheries over the last few years?

Again, I am going to ask you to give us that later. If you will just make that for purposes of the record, because we are kind of running out of time.

[The attached pamphlet contains a map showing the area of the shrimp grounds off Brazil. It also contains other information and statistics relative to the U.S.-Brazil Shrimp Agreement:]



## Investigations and Management of the Guianas Shrimp Fishery Under the U.S.—Brazil Agreement <sup>1</sup>

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The U.S.—Brazil Agreement signed on May 9, 1972, is the most recent of the U.S. bilateral fishery agreements. The National Marine Fisheries Service (NMFS) was given, among other responsibilities connected with the Agreement, the task of collecting information about the fishery to meet the terms of the Agreement and to acquire a scientific understanding of the resource. This paper describes the progress made, which includes setting up a logbook system for recording catch and effort statistics and carrying out a resource survey to determine the species composition of the shrimp population on the fishing grounds.

### HISTORY OF THE OFFSHORE FISHERY

The commercial shrimp fishery off the northeast coast of South America, as we know it today, began in 1959. The general location and the approximate extent of the offshore fishing grounds are shown in Figure 1. The results of cruises by the U.S. exploratory fishing vessel *Oregon* in the fall of 1957 and the late summer of 1958 focused the attention of the U.S. shrimp industry on the Guianas region (Bullis and Thompson, 1959). Other surveys also contributed to the knowledge of the shrimp and fish resources of the region (U.S. Fish and Wildlife Service, 1954; Higman, 1959; Durand, 1959; Richards, 1955; Salmon, 1958; and Mitchell and McConnell, 1959). Commercial shrimp vessels began operating from Paramaribo in October 1958, from Georgetown in January 1959 and from other ports in the early and mid 1960's. Landings are presently made at six ports (Fig. 1). The vessels of a number of different countries participate in the fishery: Brazil, Guyana, Japan, Korea, Surinam, Trinidad and Tobago and the U.S. (Gross, 1973).

The Guianas shrimp fishery grew rapidly from its beginning. In 1960, the first year for which reliable catch statistics are available, the total landings were 4 million pounds (Fig. 2) (Naidu and Boerema, 1972). By 1968, the year of peak catch, the landings had increased to 27 million pounds. The total catch remained high in 1969 but declined in 1970 and 1971. The smaller total landings in 1971 (20 million pounds) are coincident with the jurisdictional problems of U.S. flag

<sup>1</sup>Contribution No. 224, Southeast Fisheries Center, National Marine Fisheries Service, NOAA, Miami, Florida 33149.

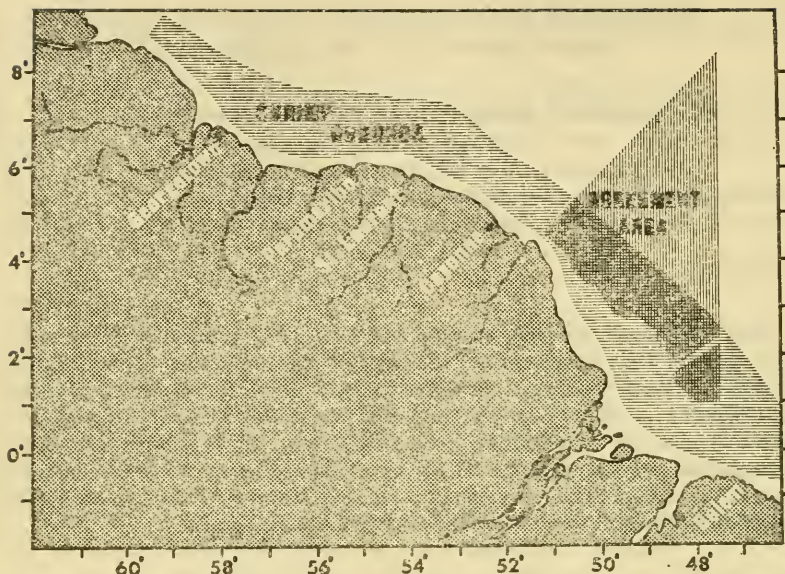


Fig. 1. The Guianas shrimp grounds off the northeastern coast of South America and the area of the U.S.-Brazil Shrimp Agreement. The Agreement area is bounded inshore by the 30-meter depth contour, offshore by the  $47^{\circ} 30' W$  longitude line, on the north by the northern border of Brazil and on the south by the  $1^{\circ} N$  latitude line. The principal ports of landing adjacent to the shrimp grounds are shown; not shown is one additional port of landing, Port-of-Spain, Trinidad.

vessels operating off Brazil and the consequent move of these vessels to other fisheries.

The present Guianas shrimp fleet is modern and fairly uniform in size, power and gear. Figure 3 shows the characteristics of the first 163 U.S. vessels which applied for permits to fish in the Agreement area. Their mean age is 4 years; overall length, 73 feet; gross tonnage, 99; and horsepower, 348. Wood-hull vessels make up 69% of the fleet; steel-hull vessels, 27%; and fiberglass-hull vessels, 4%. The catch is preserved by freezing in 53% of the boats and by ice in the remainder.

The catch per unit fishing effort for the Guianas fishery has been calculated from the data on the total annual catch and the total number of vessels in the fishery (Fig. 4). The number of vessels in the fleet increased progressively through 1970. The average catch per vessel increased in the early years of the fishery through 1965 and gradually declined thereafter. The trends in the average catch per vessel vary considerably among the various ports, both for the early years of the fishery (Naidu and Boerema, 1972) and also for the more recent years, 1970 and 1971. This variability is partly because the measure of effort (boat years) is a crude one. Boat counts were made once per year; thus



Fig. 2. Landings of shrimp (heads-off weight) for the Guianas fishery, 1960-71.

some boats counted in the fishery may not have fished the entire year and some which fished only part of the year may not have been counted. The different trends in the average catch per vessel at the various ports may be due to the imprecise measure of fishing effort used or may indicate real differences in the stocks fished.

#### DATA COLLECTION UNDER THE AGREEMENT

In 1972 NMFS established a system for collecting information on catch and fishing effort as part of its responsibility under the U.S.-Brazil Agreement. The Agreement requires that vessel skippers keep records of their fishing activity. A logbook form was designed after consultation with fleet operators, plant processors and representatives of the Brazilian fisheries department (Fig. 5). Completion of the form provides a record of information on fishing time, area and catch for each trip. To aid the skipper in describing his fishing area the logbook form includes a chart of the fishing grounds marked with grid zone number and depth. Fishing time is recorded as number of drags made and number of hours fished each day and separate entries are made for fishing during the day and at night. Catch is given as total pounds (heads-off weight) caught each day and the fisherman is asked to indicate the species and the predominant size category.

The Agreement requires that logbook records be kept for fishing in the area of Agreement off Brazil. However the U.S. industry, realizing the importance of



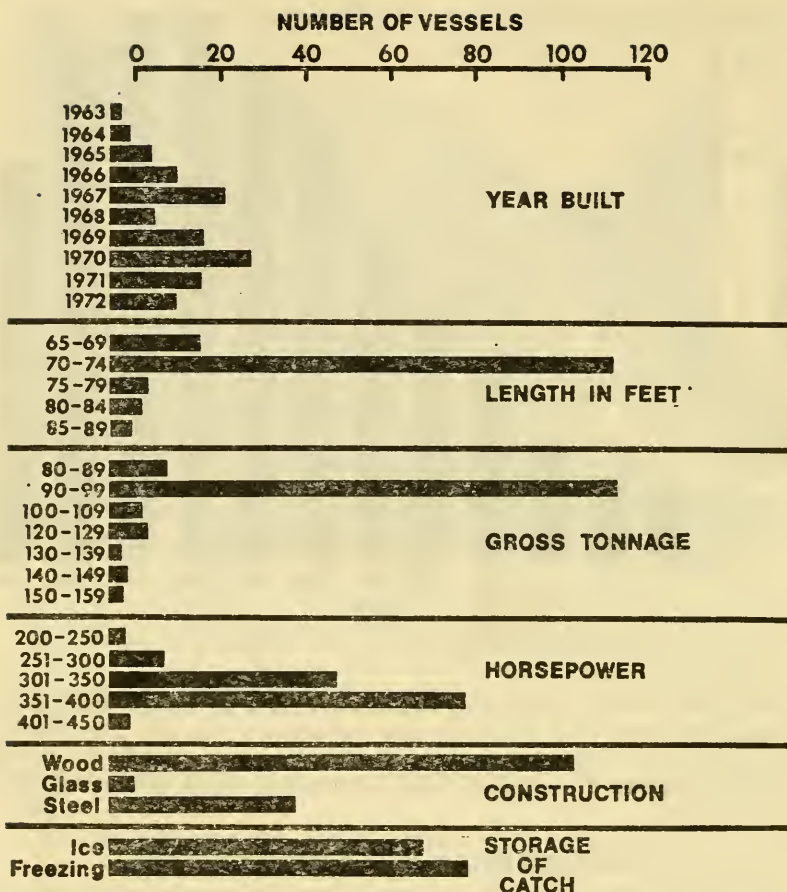


Fig. 3. Characteristics of U.S. flag shrimp vessels currently registered under the U.S.-Brazil Shrimp Agreement. No vessels were included in the 110-119 gross tonnage category.

this information, has taken a far-sighted step by volunteering to record and submit these data for the entire area of the fishery. In addition to the logbook reports, we receive a report from each processing plant of the size composition of each vessel's landings. It is important to point out that although NMFS provides the logbook forms and processes and analyzes the statistical data, the U.S. industry collects and submits the information. The collection of raw data is the most important part of any fishery statistics system and represents a significant input of time and effort by industry members — the vessel captains and the fleet managers — towards providing the basic information necessary to understand and manage this fishery.

The information from the logbook reports will be tabulated and made available in summary form. The summary, prepared by computer print-out on a monthly or quarterly basis, will show the catch in pounds and the fishing effort in number of drags made and number of hours fished for each fishing zone and depth range. This information will be further used to study the unit of fishing effort which will best describe the fluctuations in the stocks.

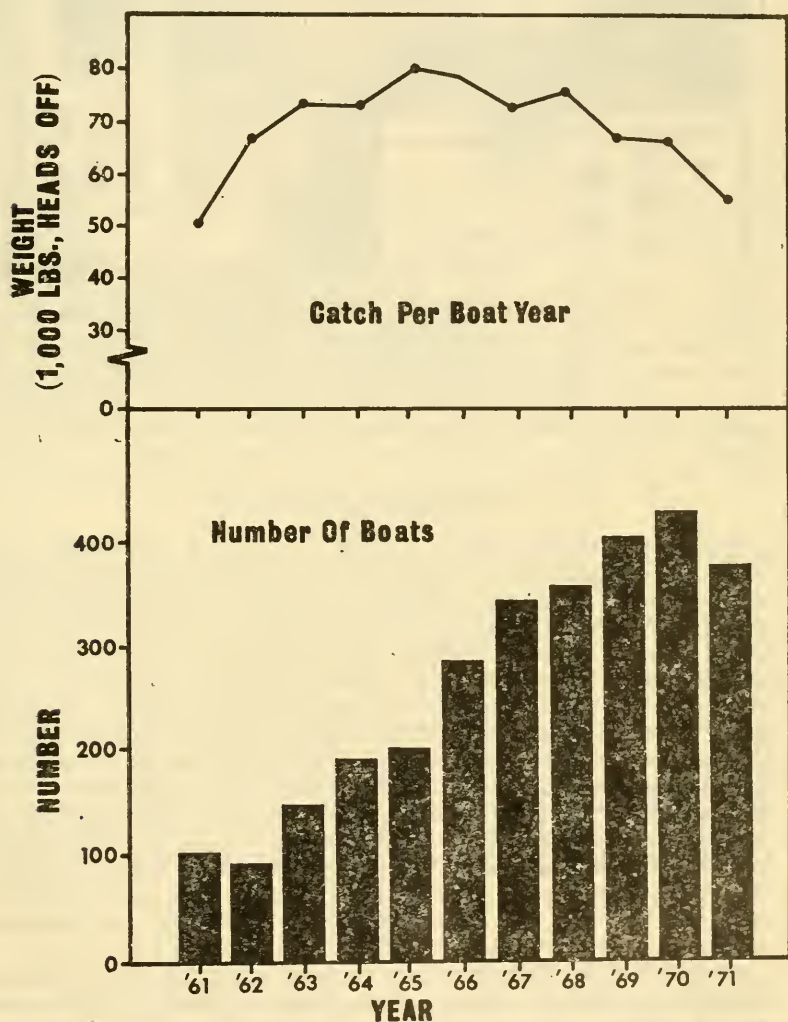


Fig. 4. Average annual catch per vessel and the number of vessels operating each year in the Guianas shrimp fishery.

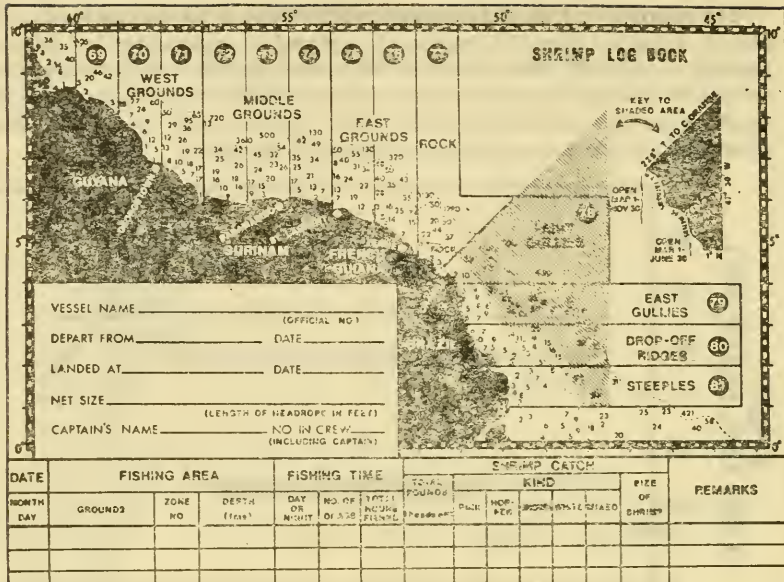


Fig. 5. Logbook used for recording catch and effort information from the Guianas shrimp fishery.

## RESOURCE SURVEY

Three species of penacid shrimp (*Penaeus brasiliensis*, *P. aztecus subtilis* and *P. duorarum notialis*), which make up the majority of the commercial landings, are processed under the single category "pink shrimp." There is, therefore, no information available for this category on the landings by species. White shrimp (*P. schmitti*) make up the remainder of the landings and are processed as a distinct category. We carried out a resource survey during the June-July 1972 cruise of the *Oregon II* to determine the areal distribution of the four species of shrimp off Guyana; Surinam and French Guiana. A one-half or 1-hour tow with two nets was made at night at stations along 14 inshore-offshore transects at planned depths of 15, 20, 25, 30 and 35 fathoms. The average catch for 66 stations occupied during the survey was 14 pounds per hour of towing (7 pounds per net hour). The largest catch was 122 pounds per hour of towing. Fifteen percent of the total number of hauls had commercial-size catches (above 25 pounds per hour's towing — equivalent to 200 pounds per 8 hours of fishing). The catch rates were comparable to those reported by Bullis and Thompson (1959).

The distribution of the four species of shrimp is shown in Figure 6. At the four transects off eastern Guyana and western Surinam the shrimp catch consisted of a majority of pink spotted shrimp (*P. brasiliensis*) at the offshore stations and a majority of pink shrimp (*P. duorarum notialis*) at the inshore stations. The



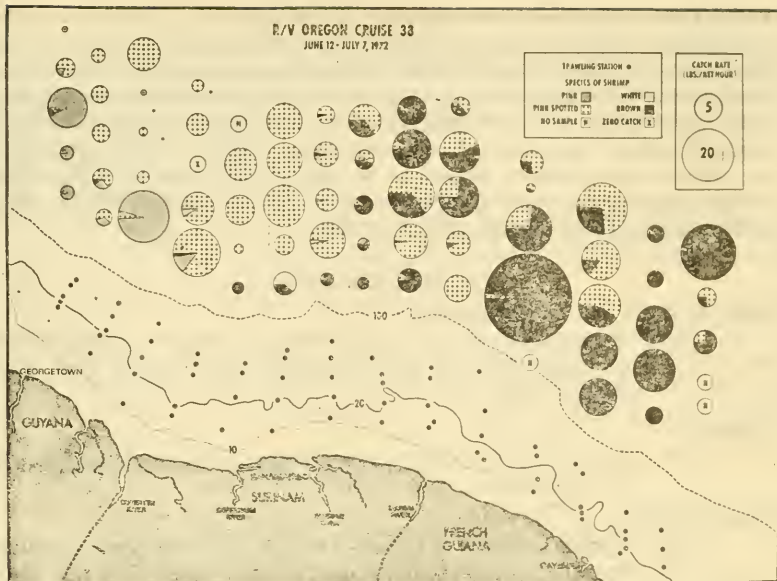


Fig. 6. Species distribution and catch rate of commercial shrimp off the Guianas in June and July 1972. The black dots indicate the geographical location of trawling stations of the *R/V Oregon II* along 14 inshore-offshore transects. The corresponding circles represent the catch rate and species composition of shrimp at these stations.

highest catch rate of pink shrimp (18.5 pounds per net hour) was made at 15 fathoms off the mouth of the Corentyn River. At the offshore stations of the three transects off central Surinam the catch consisted almost entirely of pink spotted shrimp; at the inshore 15-fathom stations, of brown shrimp (*P. aztecus subtilis*) or a mixture of brown shrimp and white shrimp (*P. schmitti*). At the remaining transects off eastern Surinam and French Guiana the catch was almost exclusively brown shrimp and pink spotted shrimp, with brown shrimp predominating at 19 out of the 32 stations. Catches of brown shrimp were highest at the 20-fathom station, 50 miles northwest of Cayenne (60.5 pounds per net hour).

Our survey showed that a single species of shrimp dominates the catch in many areas. For the present we are asking the fishermen to indicate on the fishing logbooks the kind or kinds of shrimp caught. Later it may be desirable to sample the landings in order to get more exact data on the species composition of the catch.

### DISCUSSION

The sustained harvest from a living marine resource usually requires proper management of its fishery. Tropical shrimp stocks are presently fished in a number of areas throughout the world. Their fisheries have generally remained productive, despite intensive exploitation. Among the reasons for the continued high production of these fisheries is the apparent biological resiliency of shrimp

stocks (their high reproductive capacity and turnover rate). Furthermore the environment for shrimp has been affected adversely only in a small part of the total habitat. In spite of these favorable biological and environmental conditions, man's increasing technological capability for exploitation of living resources may eventually require that we regulate the harvest to insure maximum sustained production from the resource. Whether regulation needs to or will be applied to the Guianas shrimp fishery remains to be seen. In any event the U.S.-Brazil Shrimp Agreement provides the opportunity to study this fishery and to collect information necessary to understand its dynamics.

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## SIZE OF U.S. SHRIMP CATCH

In both 1971 and 1972, U.S. vessels fishing in the shrimp fishery off the Guianas and Brazil harvested approximately 17 million pounds of shrimp annually worth about 22 million dollars. We estimate that between 25-30 percent of these landings (approximately 4.3 million pounds worth \$5.5 million) were taken from the area of agreement off Brazil.

Mr. DINGELL. Mr. Everett?

Mr. EVERETT. One or two final questions.

Mr. Schoning, who would request the money authorized to be appropriated under this legislation; the Department of State or the Department of Commerce?

Mr. SCHONING. Counsel advises me it would be the Department of Commerce.

Mr. EVERETT. Now, suppose this legislation is enacted, how soon do you anticipate the supplemental appropriation bill will be up here? Or is there any way that you can utilize other funds to make these payments?

[Additional information follows:]

ANTICIPATED COSTS TO THE DEPARTMENT OF COMMERCE IN CARRYING OUT THE  
U.S.-BRAZIL SHRIMP AGREEMENT PURSUANT TO H.R. 8529

Costs to this Department include \$200,000 annually which will be paid to Brazil for enforcement expenses plus the in-house costs of administering the program.

Under Article VI of the U.S.-Brazil Shrimp Agreement and as confirmed in an exchange of notes between the Contracting Parties, the United States Government agreed to compensate, after the appropriation of funds by Congress, the Government of Brazil for enforcement expenses in an annual amount of \$200,000.

H.R. 8529, the "Offshore Shrimp Fisheries Act of 1973", would establish an "Offshore Shrimp Fisheries Fund" to be used by the Secretary of Commerce to make payments for enforcement expenses as provided in Article IV of the agreement. This special fund would be composed of deposits of voluntary compliance made by vessel owners willing to abide by the terms of the agreement prior to the passage of implementing legislation, permit fees collected after the bill is enacted, amounts collected for certain minimum penalties, and appropriated funds. Deposits of voluntary compliance are to be transferred into the fund and credited toward the annual permit fee and would not be in addition to payment of the permit fee. There may be instances where deposits of voluntary compliance are not paid into the fund if the subscribing party no longer desires to fish in the agreement area and does not apply for a permit. It is expected that permit fees would account for the major proportion of the monies in the fund.

Since H.R. 8529 provides that "the Secretary of Commerce, through the Secretary of State, shall pay, or cause to be paid, on behalf of the United States the enforcement expenses as provided in Article VI of the treaty", it is necessary that appropriated funds be made available to this Department to carry out this responsibility.

Assuming no change in the terms of the agreement as a result of renegotiation, no substantial change in the number of U.S. vessels engaged in the fishery and no change in the permit fees to be charged by the United States, the anticipated funds needed to be appropriated to this Department for payment to Brazil of enforcement expenses during FY 1974 and over the next five years are as follows:

Appropriated money expected to be required to add to the other money in the fund (from sources mentioned above) in order to balance the fund with the obligation to Brazil for enforcement expenses.



TABLE 1.—*Supplemental*

|                   |            |
|-------------------|------------|
| Fiscal year:      |            |
| 1974 <sup>1</sup> | \$177, 000 |
| 1975 <sup>2</sup> | 77, 000    |
| 1976 <sup>2</sup> | 77, 000    |
| 1977 <sup>2</sup> | 77, 000    |
| 1978 <sup>2</sup> | 77, 000    |
| 1979 <sup>2</sup> | 77, 000    |

<sup>1</sup> Based on annual enforcement expenses owed Brazil from May 9, 1972, the date on which the agreement entered into force, until January 1, 1974, the expiration date of the agreement—\$400,000.

<sup>2</sup> This is the difference between the \$200,000 to be paid annually to Brazil and the \$616 to be collected for each of an estimated 200 vessels engaged in the fishery.

Costs to this Department for administering the program set forth in H.R. 8529 for implementing the U.S.-Brazil Shrimp Agreement are estimated at \$79,000 per year based on an estimate of about 200 U.S. vessels in the fishery. These program administration costs include maintaining the permit system for U.S. vessels, collecting and processing statistics and certain biological data on the fishery, and U.S. costs related to enforcement. In addition to moneys collected from permit holders for the purpose of covering these administrative costs, it is expected that additional funds will be provided by the regular appropriations available to the Department. Assuming that the agreement is extended through negotiations with Brazil, and no change in the amount that can be charged in connection with the issuance of a permit for the purpose of covering administrative costs, the anticipated administrative costs to be financed with appropriated funds during FY 1974 and over the next five years are as follows:

TABLE 2

|              |           |
|--------------|-----------|
| Fiscal year: |           |
| 1974         | \$43, 000 |
| 1975         | 59, 000   |
| 1976         | 59, 000   |
| 1977         | 59, 000   |
| 1978         | 59, 000   |
| 1979         | 59, 000   |

In summary of the above, the total costs in carrying out the U.S.-Brazil Shrimp Agreement are \$200,000 annually for enforcement expenses (beginning in 1972) and an estimated \$79,000 annually for administrative costs (beginning with enactment of implementing legislation). The total of the above-described anticipated funds needed to be appropriated to this Department for both enforcement expenses (Table I) and administrative costs (Table II) during FY 1974 and over the next five years are:

TABLE 3

|              |            |
|--------------|------------|
| Fiscal year: |            |
| 1974         | \$220, 000 |
| 1975         | 136, 000   |
| 1976         | 136, 000   |
| 1977         | 136, 000   |
| 1978         | 136, 000   |
| 1979         | 136, 000   |

NOTE: The above-mentioned calculations are based on two assumptions: first, that the bill will be enacted during the current fiscal year; and second, that every U.S. vessel now fishing in the agreement area will purchase a permit after enactment of the bill into law.

Mr. SCHONING. We do not have any immediate plans for reprogramming any funds to pay for this.

Mr. DINGELL. Wait just a minute. Are you saying that this enactment of this legislation will require reprogramming of funds out of existing NOAA budgets?

Mr. SCHONING. Let me answer that in this way. Mr. Everett's question was: "Do we have any plans for reprogramming?" and my answer was no. Let me comment further.

There are requirements for administration of the agreement under the bill. We are presently absorbing this within our own shop—the amount of the administration that needs to be done.

Mr. DINGELL. I want you to tell me, not at this time, but I want you to make a submission to this committee informing us where those programs are coming from, and what programs are briefly supplying funds for this program.

Mr. SCHONING. If I gave that impression, I did not intend to.

We have no plans for reprogramming funds to finance this from our present—

Mr. DINGELL. You are doing that now.

Mr. SCHONING. I wonder if I could have Deputy Regional Director Allen comment on that point because it comes under his immediate supervision.

Mr. ALLEN. Mr. Chairman, there are certain administrative functions under the voluntary provisions of this agreement that must be carried out by our staff in the Southeast Region.

Right now U.S. fishermen are fishing there, and we are issuing letters of voluntary compliance. It takes a certain amount of time on the part of my staff to communicate with the fishing industry to issue these letters of voluntary compliance.

In addition to that, we receive from the fishing industry their log-books, and we are maintaining records of the catch in different areas.

So what we are talking about here is the time and efforts of our staff to carry out these functions.

Mr. SCHONING. Mr. Chairman, one further comment.

I am reminded that in the exchange of notes there is a reference that the Government of the United States of America shall, after the appropriation of funds by Congress, compensate the Government of Brazil in an amount of U.S. \$200,000.

Mr. EVERETT. Suppose there is no implementation of this bill? Is the United States still obligated to pay the \$200,000 to Brazil?

Mr. SCHONING. If the bill becomes law, but presently there is no funding.

Mr. EVERETT. No if it does not become law. There is no appropriation, yet you have an agreement with Brazil saying that you are willing to pay the \$200,000 a year.

Is the agreement in force?

Mr. SCHONING. Let me refer you to Mr. Parsons, who was more active in developing the background.

Mr. PARSONS. Mr. Everett, I think your question should properly be answered by the State Department negotiators who are present.

If you read the agreement strictly, there would be no obligation to pay Brazil until Congress appropriated the funds. But again I think that question should be referred to the State Department people.

Mr. DINGELL. I think your point is well taken, and I notice that Mr. Van Campen and Mr. Pitman are here; and will give us response to that question.

Mr. Everett?

Mr. EVERETT. Have there been any payments to the Brazilian Government at this time?

Mr. SCHONING. There has been no payment of money to date. They have received no money whatsoever.

Mr. EVERETT. Were not several vessels seized recently?

Mr. SCHONING. Excuse me, I stand corrected.

Mr. ALLEN. There was money paid directly by fishermen to the Government of Brazil when they were seized.

I think three vessels were charged about \$600 apiece, as I recall.

In addition to that, one vessel paid about \$3,500 in towing charges. But these went directly from the industry to the Government of Brazil.

Mr. DINGELL. My question at that point, were the fishermen compensated under the Fishermen's Act?

Mr. SCHONING. No.

Mr. DINGELL. Will they be? And, if not, why were not they so compensated?

Mr. ALLEN. They have made no application for such reimbursements. As I understand it, none of these vessels have had the special insurance provisions of the act. In other words, they were not paying for this benefit.

Mr. DINGELL. Now, there is some compensation that come from the special insurance provisions?

Mr. SCHONING. Yes, sir.

Mr. DINGELL. And some compensations that flow from the Federal Government.

I would like a precise statement as to the rights of these vessels which have been seized on the high seas, with regard to the rights of American fishermen under the Fishermen's Protective Act.

Mr. SCHONING. Mr. Chairman, we will provide that.

Mr. DINGELL. Well, I have noticed other countries are quite generous when our fishermen get involved, and I have difficulty distinguishing one from the other.

Now, I want you, if you please, gentlemen, to give us a precise comment as to how H.R. 8529 in its various sections interacts with, amends, changes, alters, or effects the Fishermen's Protection Act as amended, and also the rights of American citizens and fishermen under the Fishermen's Protective Act.

Mr. SCHONING. Yes, sir; this will be provided.

[Information to be supplied follows:]

#### STATEMENT CONCERNING THE THREE U.S. FISHING BOATS SEIZED BY BRAZIL

The three U.S. shrimp fishing boats seized by Brazil while in the Agreement area will not be able to claim relief under the Fishermen's Protective Act for the charges assessed against them. The Fishermen's Protective Act is not applicable to these three cases since the seizures were made in accordance with the provisions of the U.S.-Brazil Shrimp Agreement. The Fishermen's Protective Act states that its provisions will not be operative if a seizure occurs pursuant to the terms of an international agreement to which the United States is a party.

If H.R. 8529 had been law at the time these three boats were seized, it is conceivable that the vessel owners, masters, or other persons would be entitled to reimbursement (pursuant to subsection 6(c)) for the "unusual enforcement expenses" (the \$100.00 a day costs incurred for each day that a U.S. flag shrimp fishing vessel is under the control of the Brazilian authorities) stipulated in the exchange of notes between the United States and Brazil confirming the intended operation of the Agreement.



GENERAL APPLICATION OF THE FISHERMEN'S PROTECTIVE ACT WITH RESPECT TO THE  
OPERATION OF THE U.S.-BRAZIL SHRIMP AGREEMENT

The Fishermen's Protective Act states that it does not apply if a vessel seizure takes place in accord with the operation of an international fishery agreement to which the United States is a party. Consequently, the Act would not apply to a seizure by Brazil of a U.S. vessel that was fishing for shrimp in waters covered by the U.S.-Brazil Shrimp Agreement in violation of the terms of the Agreement.

The Fishermen's Protective Act would operate to assist a U.S. vessel that was seized by Brazil in waters outside those covered by the Agreement and beyond the territorial jurisdiction of Brazil as recognized by the United States.

Mr. DINGELL. I might note that if I appear to be demonstrating any sense of outrage this morning, it is directly related to the fact that the Foreign Affairs Committee and Foreign Aid bill has excised the Fishermen's Protective Act. I probably will not move with any great haste on this bill until I resolve that difference with the Foreign Affairs Committee, knowing the tenderness which the State Department has viewed the Fishermen's Protective Act. Over the years I come to the conclusion that the Foreign Affairs Committee's action is related quite directly to some interest expressed to them officially or unofficially by the State Department.

While I am prepared to take care of the American fishermen when they are seized, I am not sure that I am going to look with favor on the action of our State Department is sneaking over to the Foreign Affairs Committee to get this committee's pronouncements out of the act having the Congress repeal them.

I notice Mr. Blow is here, and I hope he is making appropriate notes for higher officials as to the views of this committee, and also the members of this committee who are equally outraged about this matter as I am.

Mr. Everett?

Mr. EVERETT. Just one final comment, Mr. Chairman.

I notice the witness stated that the three vessels that were seized, paid money to get free and they did not buy a license.

The act says that any fines or other direct charges paid in order to obtain relief, would be entitled to be reimbursed under the act.

You might want to consider that language in the act when you respond to Mr. Dingell's question concerning the seizure of its three American shrimp hauls.

Thank you, Mr. Chairman.

Mr. DINGELL. Mr. Schoning, this has been your first appearance before this committee. The Chair notes that I approve of the administration of the progress being made under your leadership.

We are pleased to have you here, and I commend you for that.

I thank you and your associates for your presence here.

The Chair recognizes now Mr. Ernest Donini.

**STATEMENT OF ERNEST DONINI, SECRETARY-TREASURER,  
SUPERIOR SEAFOODS, TAMPA, FLA.; ACCOMPANIED BY GEORGE  
STEEL, COUNSEL**

Mr. DONINI. I have one associate with me, Mr. George Steel.

Mr. DINGELL. Mr. Steel is known to the Chair. We have had the pleasure of Mr. Steele before.

Mr. DONINI. I have prepared a statement to read to you and copies of it; if not, we will let it stand as read and answer any questions that I can answer for you while I am here.

Mr. DINGELL. That is a great kindness.

Without objection, your full statement will be inserted in the record as if given, Mr. Donini, and we will recognize you for summary and additional comments, as you choose.

[Prepared statement follows:]

STATEMENT OF ERNEST DONINI, SECRETARY-TREASURER, SUPERIOR SEAFOODS CORP.

My name is Ernest Donini. I am Secretary and Treasurer of Superior Seafoods Corporation, headquartered in Tampa, Florida, operating 18 shrimp trawlers in waters adjacent to Brazil. In addition to my Company, I am also today representing the American Shrimpboat Association, the National Shrimp Congress and the Southeastern Fisheries Association. These three organizations represent all of the American shrimp companies operating in waters off Brazil.

Mr. Chairman, I am most appreciative of the opportunity to testify here today, since I am convinced that the passage of H.R. 8529 is essential to our continued ability to fish in waters off of Brazil, and as I will point out, if our fleets should be stopped from fishing in these waters, it would have a disastrous effect on the total domestic shrimp industry of the Gulf Coast of the United States.

I began my career in the shrimp industry 19 years ago as a deck hand on a shrimp trawler operating out of Tampa, Florida. Later my family bought our first shrimp boat. In 1960, we were among the first American shrimp boats to begin the development of shrimp production off the coast of Brazil.

I would like to point out that one of the major reasons that we and others were forced to explore the possibilities of developing an industry in this part of the world was because, in my judgment, proper attention had not been paid to developing a proper management and conservation program covering the shrimp resources off the coast of the United States.

As I said, in 1960, my four boats joined the approximately 36 other American based shrimp boats who had begun fishing the waters off the Guianas coast the year before, in 1959. Within a year or two, there were approximately 250 boats off the Guianas and some were beginning to explore the waters off the coast of Brazil. One of the reasons that we waited so long to go to Brazil was because shrimping in Brazilian waters is very difficult. The currents are very strong and the bottoms are rough. It is very easy to lose your fishing gear, in fact, we still lose some every day of the year.

Toward the end of the Sixties, the Brazilian Government began harrassing and threatening to seize us.

I was a member of the industry delegation that went with officials of the Department of State to negotiate our present agreement with Brazil, in 1971. From what I know, the agreement that we finally worked out with Brazil has been one of the best solutions to fishing jurisdiction disputes which this country has worked out with any foreign country. The reason I think this is that under the terms of this agreement, we have been able to continue fishing these waters, and, even more importantly, we have been able to begin a shrimp conservation program at an early time in the development of this fishery, which, in my opinion, is not only protecting the resource, but made fishing better, both for ourselves and for the Brazilians.

At the present time we have about 200 American boats who have voluntarily complied with this agreement. Each of these 200 boats have deposited in an Escrow Account, \$700 which, when this Act is passed, will be given to the Brazilian government under the terms of the agreement.

Again, Mr. Chairman, I would like to point out that if these approximately 200 boats were forced to leave these waters, most of them would have to either go out of business or return to shrimping areas near the coast of the United States, which would make it very difficult for all of us to survive.

I have mentioned the conservation program. Under this agreement, there is a closed season for three months, during December, January and February. This three month closed season protects the shrimp until they have an opportunity to grow to a desirable commercial size, as well as giving the bottoms

an opportunity to rest and replenish the food necessary for the growth of the young shrimp. Our record catches this year, following the closed season, is proof to me as a fisherman of the value of this closed season, and the conservation program which we hope to continue.

Mr. Chairman, we sincerely hope that this Committee and the Congress will act favorably on this bill. We fear that if favorable action is not taken within the near future, it will severely jeopardize the renewal of this agreement, which will not only be costly to American shrimp operations, but deny us of several million pounds of the world's most desirable protein, because a shrimp's life cycle is about one year, and if they are not caught they are lost for ever.

I thank you for the opportunity to appear, and I will be glad to try to answer any questions which you may have.

Mr. DONINI. Thank you.

Well, you know, if you looked at my statement, you know that I have a fleet operating out of these waters; I participate in the agreement which we were in, in Brazil, then with other fisheries, other people in the same fisheries that I am in.

We have done—at the time we considered this entire agreement of the facts that all the seizing is going on; at this time we had to take some measures to get something done that we could keep working until the time that the Law of the Sea is completed; and we do not really know what is going to come out of the Law of the Sea.

Mr. Studds and Mr. Cohen, they are New England fishermen, and we are down south in Florida; we fish off the coast of Brazil. Had we not done what we did here, we would no longer be in business. We had no protection down in Brazil at this time, and we had the Fishermen's Protective Act, but then when we did away with that we had done what we had to survive in this business.

We went into it with Brazil more as a conservation program than is given into what they call their 200-mile limit. We never agreed that they had 200-mile limits; but we thought we had to survive during this interim agreement.

That is about all I have now. If you have any questions?

Mr. DINGELL. Mr. Donini, the committee is keenly aware of your problem, and we are anxious to be helpful to you if we can.

I am considerably outraged about matters in other committees, where there is an active attempt being made to repeal parts of the Fishermen's Act put in by this committee to protect the fishermen.

I do not know if there is any other government paying to fish the high seas, but it may be that we are going to have to if we expect to keep on fishing.

Mr. EVERETT?

Mr. EVERETT. Just one question.

Is the shrimp industry behind this legislation?

Mr. DONINI. Yes, sir.

Mr. EVERETT. Have any shrimp vessels been seized over the past years by Brazil?

Mr. DONINI. No, sir. We have been harassed, et cetera, threatened in Brazil.

Mr. DINGELL. Been harassed since the agreement?

Mr. DONINI. No, sir; before the agreement.

Mr. EVERETT. But you never were seized?



Mr. DONINI. No.

Mr. EVERETT. Your vessel or any shrimp vessel of the United States?

Mr. DONINI. Not really.

Mr. EVERETT. So we have not had a test case like the tuna vessels that has been seized. If seized you will find that you get reimbursed later by the Federal Government, which does not cost the vessel in the long run anything except for some loss of time.

Here you are paying out \$600 per year per vessel plus detention charges of \$100 a day. Have you made an analysis as to which program would be better for your industry?

Mr. DONINI. Yes, we feel that we went the best way of the two. If we would have to put the fine up, like the tuna people, I do not know how many different people could afford the fines and pay interest on the money; you would pay the fines until you get it back from the Fishermen's Protective Act.

Mr. EVERETT. Well, this committee last year expedited, considerably the reimbursement to the owner, now it should not take more than 2 or 3 weeks at the most, maybe shorter than that, in order for the vessel owner to be reimbursed.

I am still puzzled as to which is the best way to go in view of the fact that you will still be protected under the Fishermen's Protective Act if this legislation is not passed.

Thank you, Mr. Chairman.

Mr. DINGELL. Gentlemen, the committee thanks you.

No further testimony to be heard by the committee this morning.

The committee will stand adjourned, pending the call of the Chair.

[The following was received for inclusion in the record:]

HON. LEONOR K. SULLIVAN,  
*House of Representatives, Chairman,  
Merchant Marine Fisheries Committee,  
Washington, D.C.*

Unfortunately it is not possible for me to appear before the Merchant Marine and Fisheries Committee for a hearing on July 20th. This legislation is necessary in order to implement the treaty concerning shrimp signed on May 9, 1972 by the Government and the United States of Brazil. The Treaty has been complied with by both governments and the U.S. fisherman. Since the signing of the preliminary agreement, preliminary talks for extending the treaty should be undertaken early this fall and it is urgent that the implement in legislation covered by H.R. 8529 be passed prior to these talks with Brazil. The Texas Shrimp Association endorses this legislation and respectfully requests your committees favorable consideration.

ROBERT G. MAUERMANN,  
*Executive Director,  
Texas Shrimp Assn.*

[Whereupon, at 12:40 p.m., the subcommittee was adjourned, pending the call of the Chair.]

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